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HOUSE BILL NO. 1064

Offered January 13, 2016

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A BILL to amend and reenact §§ 2.2-225, 2.2-1507, 2.2-1509.3, 2.2-2005, 2.2-2006, 2.2-2007, 2.2-2009, 2.2-2011, 2.2-2012, 2.2-2013, 2.2-2014, 2.2-2016, 2.2-2017, 2.2-2018.1, 2.2-2020, 2.2-2021, 2.2-2023, 2.2-2027, 2.2-2699.6, 2.2-3501, 2.2-4343, 23-9.6:1.01, 23-38.88, and 58.1-1840.1 of the Code of Virginia; to amend the Code of Virginia by adding sections numbered 2.2-2007.1 and 2.2-2016.1; and to repeal §§ 2.2-2008, 2.2-2010, and 2.2-2015 of the Code of Virginia, relating to reorganizing and recodifying the statutory duties and responsibilities of the Virginia Information Technologies Agency.

Patrons—Jones and Greason

Referred to Committee on Science and Technology

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-225, 2.2-1507, 2.2-1509.3, 2.2-2005, 2.2-2006, 2.2-2007, 2.2-2009, 2.2-2011, 2.2-2012, 2.2-2013, 2.2-2014, 2.2-2016, 2.2-2017, 2.2-2018.1, 2.2-2020, 2.2-2021, 2.2-2023, 2.2-2027, 2.2-2699.6, 2.2-3501, 2.2-4343, 23-9.6:1.01, 23-38.88, and 58.1-1840.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 2.2-2007.1 and 2.2-2016.1 as follows:

§ 2.2-225. Position established; agencies for which responsible; additional powers.

The position of Secretary of Technology (the Secretary) is created. The Secretary shall be responsible to the Governor for the following agencies, councils, and boards: Information Technology Advisory Council, Innovation and Entrepreneurship Investment Authority, Virginia Information Technologies Agency, Virginia Geographic Information Network Advisory Board, and the E-911 Services Board. The Governor, by executive order, may assign any other state executive agency to the Secretary, or reassign any agency listed in this section to another Secretary.

Unless the Governor expressly reserves such power to himself, the Secretary may, with regard to strategy development, planning and budgeting for technology programs in the Commonwealth:

1. Monitor trends and advances in fundamental technologies of interest and importance to the economy of the Commonwealth and direct and approve a stakeholder-driven technology strategy development process that results in a comprehensive and coordinated view of research and development goals for industry, academia and government in the Commonwealth. This strategy shall be updated biennially and submitted to the Governor, the Speaker of the House of Delegates and the President Pro Tempore of the Senate.

2. Work closely with the appropriate federal research and development agencies and program managers to maximize the participation of Commonwealth industries and universities in these programs consistent with agreed strategy goals.

3. Direct the development of plans and programs for strengthening the technology resources of the Commonwealth's high technology industry sectors and for assisting in the strengthening and development of the Commonwealth's Regional Technology Councils.

4. Direct the development of plans and programs for improving access to capital for technology-based entrepreneurs.

5. Assist the Joint Commission on Technology and Science created pursuant to § 30-85 in its efforts to stimulate, encourage, and promote the development of technology in the Commonwealth.

6. Continuously monitor and analyze the technology investments and strategic initiatives of other states to ensure the Commonwealth remains competitive.

7. Strengthen interstate and international partnerships and relationships in the public and private sectors to bolster the Commonwealth's reputation as a global technology center.

8. Develop and implement strategies to accelerate and expand the commercialization of intellectual property created within the Commonwealth.

9. Ensure the Commonwealth remains competitive in cultivating and expanding growth industries, including life sciences, advanced materials and nanotechnology, biotechnology, and aerospace.

10. Monitor the trends in the availability and deployment of and access to broadband communications services, which include, but are not limited to, competitively priced, high-speed data services and Internet access services of general application, throughout the Commonwealth and advancements in communications technology for deployment potential. The Secretary shall report annually by December 1 to the Governor and General Assembly on those trends.

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59 11. Designate specific projects as enterprise information technology projects, prioritize the
60 implementation of enterprise information technology projects, establish enterprise oversight committees
61 to provide ongoing oversight for enterprise information technology projects. At the discretion of the
62 Governor, the Secretary shall designate a state agency or public institution of higher education as the
63 business sponsor responsible for implementing an enterprise information technology project, and shall
64 define the responsibilities of lead agencies that implement enterprise information technology projects.
65 For purposes of this subdivision, "enterprise" means an organization with common or unifying business
66 interests. An enterprise may be defined at the Commonwealth level or Secretariat level for programs and
67 project integration within the Commonwealth, Secretariats, or multiple agencies.

68 12. Establish Internal Agency Oversight Committees and Secretariat Oversight Committees as
69 necessary and in accordance with § 2.2-2021.

70 13. Review and approve the Commonwealth strategic plan for information technology, as developed
71 and recommended by the Chief Information Officer pursuant to ~~§ 2.2-2007 subdivision A 3 of~~
72 ~~§ 2.2-2007.1.~~

73 14. Communicate regularly with the Governor and other Secretaries regarding issues related to the
74 provision of information technology services in the Commonwealth, statewide technology initiatives, and
75 investments and other efforts needed to achieve the Commonwealth's information technology strategic
76 goals.

77 15. Provide consultation on guidelines, at the recommendation of the Innovation and
78 Entrepreneurship Investment Authority, for the application, review, and award of funds from the
79 Commonwealth Research Commercialization Fund pursuant to § 2.2-2233.1.

80 **§ 2.2-1507. Participation of certain agencies in budget development process of other agencies.**

81 Agencies having responsibilities granted under §§ ~~2.2-2044~~ 2.2-2007.1, 2.2-2696, and 51.5-135 shall
82 participate in the budget development process of relevant agencies and receive from these agencies, prior
83 to submission to the Department their proposed programs and budgets. Recommendations to the
84 appropriate agencies and the secretaries of the Governor on related matters shall be made prior to budget
85 submissions.

86 **§ 2.2-1509.3. Budget bill to include appropriations for major information technology projects.**

87 A. For purposes of this section, unless the context requires a different meaning:

88 "Commonwealth Project Management Standard" means the same as that term is defined in
89 § 2.2-2006.

90 "Major information technology project" means the same as that term is defined in § 2.2-2006.

91 "Major information technology project funding" means an estimate of each funding source for a
92 major information technology project for the duration of the project.

93 B. In "The Budget Bill" submitted pursuant to § 2.2-1509, the Governor shall provide for the
94 funding of major information technology projects, as specified herein. Such funding recommendations
95 shall be for major information technology projects that have or are pending project initiation approval as
96 defined in the Commonwealth Project Management Standard.

97 The Governor shall include in "The Budget Bill" submitted pursuant to § 2.2-1509 a biennial
98 appropriation for major information technology projects and the following information for each such
99 project:

100 1. For major information technology projects that have been recommended for funding, a brief
101 statement explaining the business case for the project, the priority of the project in the Recommended
102 Technology Investment Projects Report as required by § 2.2-2007, and an explanation, if necessary, if
103 the Governor informed the Chief Information Officer (CIO) that an emergency existed as set forth in
104 ~~§ 2.2-2008 subdivision A 5 of § 2.2-2016.1;~~

105 2. Total estimated project costs, as defined by the Commonwealth Project Management Standard,
106 including the amount of the agency's or institution's operating appropriation that will support the project;

107 3. All project costs incurred to date as defined by the Commonwealth Project Management Standard;

108 4. Recommendations or comments of the Public-Private Partnership Advisory Commission, if the
109 project is part of a proposal under the Public-Private Education Facilities and Infrastructure Act of 2002
110 (§ 56-575.1 et seq.);

111 5. The CIO's assessment of the project and the status as of the date of the budget bill submission to
112 the General Assembly;

113 6. The planned project start and end dates as defined by the Commonwealth Project Management
114 Standard; and

115 7. Projected annual operations and maintenance expenditures, including but not limited to fees,
116 licenses, infrastructure, and agency and nonagency staff support costs, for information technology
117 delivered by major information technology projects for the first budget biennium after project
118 completion.

119 C. The CIO shall immediately notify each member of the Senate Finance Committee and the House
120 Appropriations Committee of any decision to terminate in accordance with ~~§ 2.2-2015 subsection B of~~

§ 2.2-2016.1 any major information technology project in the budget bill. Such communication shall include the CIO's reason for such termination.

§ 2.2-2005. Creation of Agency; appointment of Chief Information Officer.

A. There is hereby created the Virginia Information Technologies Agency (VITA), which shall serve as the agency responsible for administration and enforcement of the provisions of this Chapter.

B. The Governor shall appoint a Chief Information Officer *of the Commonwealth* (the CIO) to oversee the operation of VITA. The CIO shall exercise the powers and perform the duties conferred or imposed upon him by law and perform such other duties as may be required by the Governor and the Secretary of Technology.

§ 2.2-2006. Definitions.

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

"Commonwealth information technology project" means any state agency information technology project that is under Commonwealth governance and oversight.

"Commonwealth Project Management Standard" means a document developed and adopted by the Chief Information Officer (CIO) pursuant to § 2.2-2008.2-2016.1 that describes the methodology for conducting information technology projects, and the governance and oversight used to ensure project success.

"Communications services" includes telecommunications services; automated data processing services; local, wide area, metropolitan, and all other data networks; and management information systems that serve the needs of state agencies and institutions.

"Confidential data" means information made confidential by federal or state law that is maintained by a state agency in an electronic format.

"Enterprise" means an organization with common or unifying business interests. An enterprise may be defined at the Commonwealth level or secretariat level for program and project integration within the Commonwealth, secretariats, or multiple agencies.

"Executive branch agency" or "agency" means any agency, institution, board, bureau, commission, council, public institution of higher education, or instrumentality of state government in the executive department listed in the appropriation act. However, "executive branch agency" or "agency" does not include the University of Virginia Medical Center, a public institution of higher education to the extent exempt from this chapter pursuant to the Restructured Higher Education Financial and Administrative Operations Act (§ 23-38.88 et seq.) or other law, or the Virginia Port Authority.

"Information technology" means communications, telecommunications, automated data processing, applications, databases, data networks, the Internet, management information systems, and related information, equipment, goods, and services. The provisions of this chapter shall not be construed to hamper the pursuit of the missions of the institutions in instruction and research.

"ITAC" means the Information Technology Advisory Council created in § 2.2-2699.5.

"Major information technology project" means any Commonwealth information technology project that has a total estimated cost of more than \$1 million or that has been designated a major information technology project by the CIO pursuant to the Commonwealth Project Management Standard developed under § 2.2-2008.2-2016.1.

"Noncommercial telecommunications entity" means any public broadcasting station as defined in § 22.1-20.1.

"Public broadcasting services" means the acquisition, production, and distribution by public broadcasting stations of noncommercial educational, instructional, informational, or cultural television and radio programs and information that may be transmitted by means of electronic communications, and related materials and services provided by such stations.

"Public telecommunications entity" means any public broadcasting station as defined in § 22.1-20.1.

"Public telecommunications facilities" means all apparatus, equipment and material necessary for or associated in any way with public broadcasting stations as defined in § 22.1-20.1 or public broadcasting services, including the buildings and structures necessary to house such apparatus, equipment and material, and the necessary land for the purpose of providing public broadcasting services, but not telecommunications services.

"Public telecommunications services" means public broadcasting services.

"Secretary" means the Secretary of Technology.

"State agency" or "agency" means any agency, institution, board, bureau, commission, council, or instrumentality of state government in the executive branch listed in the appropriation act. However, the terms "state agency," "agency," "institution," "public body," and "public institution of higher education," shall not include the University of Virginia Medical Center.

"Technology asset" means hardware and communications equipment not classified as traditional mainframe-based items, including personal computers, mobile computers, and other devices capable of storing and manipulating electronic data.

"Telecommunications" means any origination, transmission, emission, or reception of data, signs, signals, writings, images, and sounds or intelligence of any nature, by wire, radio, television, optical, or other electromagnetic systems.

"Telecommunications facilities" means apparatus necessary or useful in the production, distribution, or interconnection of electronic communications for state agencies or institutions including the buildings and structures necessary to house such apparatus and the necessary land.

§ 2.2-2007. Powers of the CIO.

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

1. Monitor trends and advances in information technology; develop a comprehensive six-year Commonwealth strategic plan for information technology to include: (i) specific projects that implement the plan; (ii) a plan for the acquisition, management, and use of information technology by state agencies; (iii) a report of the progress of any ongoing enterprise information technology projects, any factors or risks that might affect their successful completion, and any changes to their projected implementation costs and schedules; and (iv) a report on the progress made by state agencies toward accomplishing the Commonwealth strategic plan for information technology. The Commonwealth strategic plan for information technology shall be updated annually and submitted to the Secretary for approval.

2. Direct the formulation and promulgation of regulations necessary or incidental to the performance of duties or execution of powers conferred under this chapter. The CIO shall also develop policies, guidelines, standards, and specifications for the purchase planning, budgeting, procurement, development, and maintenance, security, and operations of information technology for state executive branch agencies; including, but not limited to, those (i) required to support. Such policies, standards, and guidelines shall include those necessary to:

1. Support state and local government exchange, acquisition, storage, use, sharing, and distribution of geographic or base map data and related technologies; (ii) concerned with.

2. Support the development of electronic transactions including the use of electronic signatures as provided in § 59.1-496; and (iii) necessary to support.

3. Support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the Commonwealth receive the greatest possible security, value, and convenience from investments made in technology.

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

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

Review of such budget requests shall include, but not be limited to, all data processing or other related projects for amounts exceeding \$250,000 in which the agency or institution has entered into or plans to enter into a contract, agreement or other financing agreement or such other arrangement that requires that the Commonwealth either pay for the contract by foregoing revenue collections, or allows or assigns to another party the collection on behalf of or for the Commonwealth any fees, charges, or other assessments or revenues to pay for the project. For each project, the agency or institution, with the exception of public institutions of higher education that meet the conditions prescribed in subsection B of § 23-38.88, shall provide the CIO (i) a summary of the terms, (ii) the anticipated duration, and (iii) the cost or charges to any user, whether a state agency or institution or other party not directly a party to the project arrangements. The description shall also include any terms or conditions that bind the Commonwealth or restrict the Commonwealth's operations and the methods of procurement employed to reach such terms.

State agencies and institutions, with the exception of public institutions of higher education that meet the conditions prescribed in subsection B of § 23-38.88, shall submit to the CIO a projected biennial operations and maintenance budget for technology assets owned or licensed by the agency or institution, and submit a budget decision package for any shortfalls.

5. Direct the development of policies and procedures for the effective management of information technology investments throughout their entire life cycles, including, but not limited to, identification, business case development, selection, procurement, implementation, operation, performance evaluation, and enhancement or retirement. Such policies and procedures shall include, at a minimum, the periodic review by the CIO of agency and public institution of higher education Commonwealth information technology projects.

6. Provide technical guidance to the Department of General Services in the development of policies and procedures for the recycling and disposal of computers and other technology assets. Such policies and procedures shall include the expunging, in a manner as determined by the CIO, of all state confidential data and personal identifying information of citizens of the Commonwealth prior to such sale, disposal, or other transfer of computers or other technology assets.

7. 4. Ensure that the costs of information technology systems, products, data, and services are contained through the shared use of existing or planned equipment, data, or services.

5. Provide for the effective management of information technology investments through their entire life cycles, including identification, business case development, selection, procurement, implementation, operation, performance evaluation, and enhancement or retirement. Such policies, standards, and guidelines shall include, at a minimum, the periodic review by the CIO of agency Commonwealth information technology projects.

6. Establish an Information Technology Investment Management Standard based on acceptable technology investment methods to ensure that all executive branch agency technology expenditures are an integral part of the Commonwealth's performance management system, produce value for the agency and the Commonwealth, and are aligned with (i) agency strategic plans, (ii) the Governor's policy objectives, and (iii) the long-term objectives of the Council on Virginia's Future.

B. In addition to other such duties as the Secretary may assign, the CIO shall:

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

8. Periodically evaluate the feasibility of outsourcing information technology resources and services, and outsource those resources and services that are feasible and beneficial to the Commonwealth.

9. Have the authority to enter into contracts with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia for the provision of information technology services.

10. 2. Report annually to the Governor, the Secretary, and the Joint Commission on Technology and Science created pursuant to § 30-85 on the use and application of information technology by state executive branch agencies and public institutions of higher education to increase economic efficiency, citizen convenience, and public access to state government. The CIO shall prepare an annual

3. Prepare annually a report for submission to the Secretary, the Information Technology Advisory Council, and the Joint Commission on Technology and Science on a prioritized list of Recommended Technology Investment Projects (RTIP Report) based upon major information technology projects submitted for business case approval pursuant to this chapter. As part of the RTIP Report, the CIO shall develop and regularly update a methodology for prioritizing projects based upon the allocation of points to defined criteria. The criteria and their definitions shall be presented in the RTIP Report. For each project recommended for funding in the RTIP Report, the CIO shall indicate the number of points and how they were awarded. For each listed project, the CIO shall also report (i) all projected costs of ongoing operations and maintenance activities of the project for the next three biennia following project implementation; (ii) a justification and description for each project baseline change; and (iii) whether the project fails to incorporate existing standards for the maintenance, exchange, and security of data. This report shall also include trends in current projected information technology spending by state executive branch agencies and secretariats, including spending on projects, operations and maintenance, and payments to VITA. Agencies shall provide all project and cost information required to complete the RTIP Report to the CIO prior to May 31 immediately preceding any budget biennium in which the project appears in the Governor's budget bill.

11. Direct the development of policies and procedures that require the Division of Project Management established pursuant to § 2.2-2016, on behalf of the CIO, to review and recommend Commonwealth information technology projects proposed by state agencies and institutions. Such policies and procedures shall be based on the criteria outlined within § 2.2-2017.

12. 4. Provide oversight for state executive branch agency or public institution of higher education efforts to modernize the planning, development, implementation, improvement, operations and maintenance, and retirement of Commonwealth information technology, including oversight for the selection, development and management of enterprise information technology.

13. 5. Develop statewide technical and data standards and specifications for information technology and related systems, including (i) the efficient exchange of electronic information and technology, including infrastructure, between the public and private sectors in the Commonwealth and (ii) the utilization of nationally recognized technical and data standards for health information technology systems or software purchased by a state executive branch agency of the Commonwealth.

14. Establish Internal Agency Oversight Committees and Secretariat Oversight Committees as necessary and in accordance with § 2.2-2021.

B. 6. Direct the compilation and maintenance of an inventory of information technology, including

305 *but not limited to personnel, facilities, equipment, goods, and contracts for services.*

306 7. *Provide for the centralized marketing, provision, leasing, and executing of licensing agreements*
307 *for electronic access to public information and government services through the Internet, wireless*
308 *devices, personal digital assistants, kiosks, or other such related media on terms and conditions as may*
309 *be determined to be in the best interest of the Commonwealth. VITA may fix and collect fees and*
310 *charges for (i) public information, media, and other incidental services furnished by it to any private*
311 *individual or entity, notwithstanding the charges set forth in § 2.2-3704, and (ii) such use and services it*
312 *provides to any executive branch agency or local government. Nothing in this subdivision authorizing*
313 *VITA to fix and collect fees for providing information services shall be construed to prevent access to*
314 *the public records of any public body pursuant to the provisions of the Virginia Freedom of Information*
315 *Act (§ 2.2-3700 et seq.). VITA is authorized, subject to the approval by the Secretary of Technology and*
316 *any other affected Secretariat, to delegate the powers and responsibilities granted in this subdivision to*
317 *any agency within the executive branch.*

318 8. *Periodically evaluate the feasibility of outsourcing information technology resources and services,*
319 *and outsource those resources and services that are feasible and beneficial to the Commonwealth.*

320 9. *Have the authority to enter into and amend contracts, including contracts with one or more other*
321 *public bodies, or public agencies or institutions or localities of the several states, of the United States*
322 *or its territories, or the District of Columbia, for the provision of information technology services.*

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

339 C. *The CIO shall develop a technology investment management standard based on acceptable*
340 *technology investment methods to ensure that all state agency or public institution of higher education*
341 *technology expenditures are an integral part of the Commonwealth's performance management system,*
342 *produce value for the agency and the Commonwealth, and are aligned with (i) agency strategic plans,*
343 *(ii) the Governor's policy objectives, and (iii) the long-term objectives of the Council on Virginia's*
344 *Future.*

345 D. *The CIO shall have the authority to enter into and amend contracts for the provision of*
346 *information technology services. Executive branch agencies shall cooperate with VITA in identifying the*
347 *development and operational requirements of proposed information technology systems, products, data,*
348 *and services, including the proposed use, functionality, and capacity, and the total cost of acquisition,*
349 *operation, and maintenance.*

350 **§ 2.2-2007.1. Additional duties of the CIO relating to information technology planning and**
351 **budgeting.**

352 A. *The CIO shall have the following duties related to information technology planning:*

353 1. *Monitor trends and advances in information technology, plan and forecast future needs for*
354 *information technology, and conduct studies and surveys of organizational structures and best*
355 *management practices of information technology systems and procedures;*

356 2. *Evaluate the needs of executive branch agencies in the Commonwealth with regard to (i) a*
357 *consistent, reliable, and secure information technology infrastructure; (ii) existing capabilities related to*
358 *building and supporting that infrastructure; and (iii) recommendation of approaches to ensure the future*
359 *development, maintenance, and financing of information technology infrastructure befitting the needs of*
360 *executive branch agencies and the service level requirements of its citizens; and*

361 3. *Develop a comprehensive six-year Commonwealth strategic plan for information technology to*
362 *include (i) specific projects that implement the plan; (ii) a plan for the acquisition, management, and*
363 *use of information technology by executive branch agencies; (iii) a report of the progress of any*
364 *ongoing enterprise information technology projects, any factors or risks that might affect their successful*
365 *completion, and any changes to their projected implementation costs and schedules; and (iv) a report on*
366 *the progress made by executive branch agencies toward accomplishing the Commonwealth strategic plan*

for information technology. The Commonwealth strategic plan for information technology shall be updated annually and submitted to the Secretary for approval.

B. The CIO shall have the following duties related to budgeting for information technology projects:

1. Develop policies, standards, and guidelines, in consultation with the Department of Planning and Budget, that are integrated into the Commonwealth's strategic planning and budgeting processes, and that executive branch agencies shall follow in developing information technology plans and technology-related budget requests. Such policies and procedures shall require consideration of the contribution of current and proposed technology expenditures to the support of executive branch agency priority functional activities, as well as current and future operating expenses, and shall be utilized by all state agencies in preparing budget requests.

2. Assist executive branch agencies in the development of information technology strategic plans pursuant to § 2.2-2014 and the preparation of budget requests for information technology that are consistent with the policies, standards, and guidelines developed pursuant to this section.

3. Review budget requests for information technology from executive branch agencies and recommend budget priorities to the Secretary. Review of such budget requests shall include all information technology projects for amounts exceeding \$250,000 for which the contract or proposed contract would, as a means of payment for the project, require the Commonwealth to forgo certain revenue collections or would allow another party to collect fees, charges, or other revenues on behalf of the Commonwealth. For each information technology project, the agency shall provide the CIO (i) a summary of the terms, (ii) the anticipated duration, and (iii) the cost or charges to any user, whether a state agency or other party not directly a party to the project arrangements. The description shall also include any terms or conditions that bind the Commonwealth or restrict the Commonwealth's operations and the methods of procurement employed to reach such terms. Executive branch agencies and institutions shall submit to the CIO a projected biennial operations and maintenance budget for technology assets owned or licensed by the agency or institution and submit a budget decision package for any shortfalls. The provisions of this subdivision shall not apply to public institutions of higher education that meet the conditions prescribed in subsection B of § 23-38.88.

§ 2.2-2009. Additional duties of the CIO relating to security of government information.

A. To provide for the security of state government electronic information from unauthorized uses, intrusions or other security threats, the CIO shall direct the development of policies, ~~procedures and~~ standards, and guidelines for assessing security risks, determining the appropriate security measures and performing security audits of government electronic information. Such policies, ~~procedures, and~~ standards ~~will, and guidelines shall~~ apply to the Commonwealth's executive, legislative, and judicial branches, and independent agencies and institutions of higher education. The CIO shall work with representatives of the Chief Justice of the Supreme Court and Joint Rules Committee of the General Assembly to identify their needs. *Such policies, standards, and guidelines shall, at a minimum:*

~~B. The CIO shall also develop policies, procedures, and standards that shall address~~ 1. Address the scope and frequency of security audits and the frequency of such security audits. In developing and updating such policies, ~~procedures, and~~ standards, and guidelines, the CIO shall designate a government entity to oversee, plan, and coordinate the conduct of periodic security audits of all executive branch agencies and independent agencies and institutions of higher education. The CIO ~~will shall~~ coordinate these audits with the Auditor of Public Accounts and the Joint Legislative Audit and Review Commission. The Chief Justice of the Supreme Court and the Joint Rules Committee of the General Assembly shall determine the most appropriate methods to review the protection of electronic information within their branches;

2. Control unauthorized uses, intrusions, or other security threats;

3. Provide for the protection of confidential data maintained by state agencies against unauthorized access and use in order to ensure the security and privacy of citizens of the Commonwealth in their interaction with state government. Such policies, standards, and guidelines shall include requirements that (i) any state employee or other authorized user of a state technology asset provide passwords or other means of authentication to use a technology asset and access a state-owned or state-operated computer network or database and (ii) a digital rights management system or other means of authenticating and controlling an individual's ability to access electronic records be utilized to limit access to and use of electronic records that contain confidential information to authorized individuals;

4. Address the creation and operation of a risk management program designed to identify information technology security gaps and develop plans to mitigate the gaps. All agencies in the Commonwealth shall cooperate with the CIO, including (i) providing the CIO with information required to create and implement a Commonwealth risk management program, (ii) creating an agency risk management program, and (iii) complying with all other risk management activities.

~~C. B. 1.~~ The CIO shall annually report to the Governor, the Secretary, and General Assembly on the results of security audits, the extent to which security policy, standards, and guidelines have been

428 *adopted by executive branch and independent agencies, and a list of those executive branch agencies*
429 *and independent agencies and institutions of higher education that have not implemented acceptable*
430 *security and risk management regulations, policies, procedures, and standards, and guidelines to control*
431 *unauthorized uses, intrusions, or other security threats. For any executive branch agency or independent*
432 *agency or institution of higher education whose security audit results and plans for corrective action are*
433 *unacceptable, the CIO shall report such results to (i) the Secretary, (ii) any other affected cabinet*
434 *secretary, (iii) the Governor, and (iv) the Auditor of Public Accounts. Upon review of the security audit*
435 *results in question, the CIO may take action to suspend the public body's executive branch agency's or*
436 *independent agency's information technology projects pursuant to §— 2.2-2015 subsection B of §*
437 *2.2-2016.1, limit additional information technology investments pending acceptable corrective actions,*
438 *and recommend to the Governor and Secretary any other appropriate actions.*

439 The CIO shall also include in this report (a) results of security audits, including those state agencies,
440 independent agencies, and institutions of higher education that have not implemented acceptable
441 regulations, standards, policies, and guidelines to control unauthorized uses, intrusions, or other security
442 threats and (b) the extent to which security standards and guidelines have been adopted by state
443 agencies.

444 D. All public bodies 2. *Executive branch agencies and independent agencies* subject to such audits as
445 required by this section shall fully cooperate with the entity designated to perform such audits and bear
446 any associated costs. Public bodies that are not required to but elect to use the entity designated to
447 perform such audits shall also bear any associated costs.

448 E. C. The provisions of this section shall not infringe upon responsibilities assigned to the
449 Comptroller, the Auditor of Public Accounts, or the Joint Legislative Audit and Review Commission by
450 other provisions of the Code of Virginia.

451 F. To ensure the security and privacy of citizens of the Commonwealth in their interactions with
452 state government, the CIO shall direct the development of policies, procedures, and standards for the
453 protection of confidential data maintained by state agencies against unauthorized access and use. Such
454 policies, procedures, and standards shall include, but not be limited to:

455 1. Requirements that any state employee or other authorized user of a state technology asset provide
456 passwords or other means of authentication to (i) use a technology asset and (ii) access a state-owned or
457 operated computer network or database; and

458 2. Requirements that a digital rights management system or other means of authenticating and
459 controlling an individual's ability to access electronic records be utilized to limit access to and use of
460 electronic records that contain confidential data to authorized individuals.

461 G. D. The CIO shall promptly receive reports from directors of departments in the executive branch
462 of state government made in accordance with § 2.2-603 and shall take such actions as are necessary,
463 convenient or desirable to ensure the security of the Commonwealth's electronic information and
464 confidential data.

465 H. The CIO shall also develop policies, procedures, and standards that shall address the creation and
466 operation of a risk management program designed to identify information technology security gaps and
467 develop plans to mitigate the gaps. All agencies in the Commonwealth shall cooperate with the CIO.
468 Such cooperation includes, but is not limited to, (i) providing the CIO with information required to
469 create and implement a Commonwealth risk management program; (ii) creating an agency risk
470 management program; and (iii) complying with all other risk management activities.

471 E. The CIO shall provide technical guidance to the Department of General Services in the
472 development of policies, standards, and guidelines for the recycling and disposal of computers and other
473 technology assets. Such policies, standards, and guidelines shall include the expunging, in a manner as
474 determined by the CIO, of all confidential data and personal identifying information of citizens of the
475 Commonwealth prior to such sale, disposal, or other transfer of computers or other technology assets.

476 I. F. The CIO shall provide all directors of agencies and departments with all such information,
477 guidance, and assistance required to ensure that agencies and departments understand and adhere to the
478 policies, procedures, and standards, and guidelines developed pursuant to this section.

479 **§ 2.2-2011. Additional powers and duties relating to development, management, and operation**
480 **of information technology.**

481 A. VITA shall have the following additional powers and duties concerning the planning, budgeting,
482 acquiring, using, and disposing of communications goods and services:

483 1. Formulate specifications for telecommunications, automated data processing, and management
484 information systems;

485 2. Analyze and approve all procurements of interconnective telecommunications facilities, telephones,
486 automated data processing, and other communications equipment and goods;

487 3. Review and approve all agreements and contracts for communications services prior to execution
488 between a state agency and another public or private agency;

489 4. Develop and administer a system to monitor and evaluate executed contracts and billing and

collection systems; and

5. Exempt from review requirements, but not from the Commonwealth's competitive procurement process, any state agency that establishes, to the satisfaction of VITA, (i) its ability and willingness to administer efficiently and effectively the procurement of communications services or (ii) that it has been subjected to another review process coordinated through or approved by VITA.

Unless specifically exempted by law, VITA shall be responsible for the development, operation, and management of information technology for every executive branch agency, pursuant to the provisions of this chapter.

B. ~~VITA~~ *The CIO* shall have the following powers and duties concerning the development, operation, and management of ~~communications services~~ *information technology*:

1. Manage and, coordinate, and provide the various telecommunications facilities and communications services, centers, and operations used by the Commonwealth information technology used by executive branch agencies;

2. Acquire, lease, or construct such *land*, facilities, and equipment as necessary to deliver comprehensive ~~communications~~ *information technology* services, and to maintain such *land*, facilities, and equipment owned or leased; and

3. Provide technical assistance to *state executive branch* agencies in such areas as: (i) designing management information systems; (ii) performing systems development services, including design, application programming, and maintenance; (iii) conducting research and sponsoring demonstration projects pertaining to all facets of telecommunications and communications services; (iv) effecting economies in telephone systems and equipment; and (v) planning and forecasting for future needs in communications services; and

4. Develop and implement information, billing, and collections systems that will aid state agencies in forecasting their needs and managing their operations *the planning, development, operation, and management of information technology.*

§ 2.2-2012. Additional powers and duties related to the procurement of information technology.

A. *The CIO shall develop policies, standards, and guidelines for the procurement of information technology of every description.*

B. 1. Information technology and telecommunications goods and services of every description shall be procured by (i) VITA for its own benefit or on behalf of other *state executive branch* agencies and institutions or (ii) such other agencies or institutions to the extent authorized by VITA. Such procurements shall be made in accordance with the Virginia Public Procurement Act (§ 2.2-4300 et seq.), regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973 (29 U.S.C. § 794d), as amended, and any regulations as ~~may be prescribed~~ *by, policies, procedures, standards, and guidelines of VITA.* In no case shall such procurements exceed the requirements of the regulations that implement the electronic and information technology accessibility standards of the Rehabilitation Act of 1973, as amended.

2. *The CIO shall review, and approve or disapprove, all executive branch agency procurements of information technology, including approval of all agreements and contracts prior to the execution of the procurement. The CIO may exempt from review requirements, but not from the Commonwealth's competitive procurement process, any executive branch agency that establishes, to the satisfaction of the CIO, (i) its ability and willingness to administer efficiently and effectively the procurement of information technology or (ii) that it has been subjected to another review process coordinated through or approved by the CIO.*

3. *The CIO shall develop and administer a system to monitor and evaluate executed information technology contracts and billing and collection systems.*

The CIO shall disapprove any procurement that does not conform to the Commonwealth strategic plan for information technology developed and approved pursuant to ~~§ 2.2-2007 subdivision A 3 of § 2.2-2007.1~~ or to the individual strategic plans of *state executive branch* agencies or ~~public institutions of higher education~~ developed and approved pursuant to § 2.2-2014.

4. *The CIO shall require that before any executive branch agency procures any computer system, equipment, or software, it shall consider whether the proposed system, equipment, or software is capable of producing products that facilitate the rights of the public to access public records under the Freedom of Information Act (§ 2.2-3700 et seq.) or other applicable law.*

~~B.~~ C. All statewide contracts and agreements made and entered into by VITA for the purchase of communications services, telecommunications facilities, and information technology goods and services shall provide for the inclusion of counties, cities, and towns in such contracts and agreements. *Counties, cities, and towns and local school divisions are authorized to purchase information technology goods and services of every description from VITA and its vendors, provided that such purchases are not prohibited by the terms of contracts for such goods and services.* Notwithstanding the provisions of § 2.2-4302.1, 2.2-4302.2, 2.2-4303.1, or 2.2-4303.2, VITA may enter into multiple vendor contracts for

the referenced services, facilities, and goods and services.

~~C.~~ *D.* VITA may establish contracts for the purchase of personal computers and related devices by licensed teachers employed in a full-time teaching capacity in Virginia public schools or in state educational facilities for use outside the classroom. The computers and related devices shall not be purchased with public funds, but shall be paid for and owned by teachers individually provided that no more than one such computer and related device per year shall be so purchased.

~~D.~~ *E.* If VITA, or any *executive branch* agency ~~or institution~~ authorized by VITA, elects to procure personal computers and related peripheral equipment pursuant to any type of blanket purchasing arrangement under which public bodies, as defined in § 2.2-4301, may purchase such goods from any vendor following competitive procurement but without the conduct of an individual procurement by or for the using agency or institution, it shall establish performance-based specifications for the selection of equipment. Establishment of such contracts shall emphasize performance criteria including price, quality, and delivery without regard to "brand name." All vendors meeting the Commonwealth's performance requirements shall be afforded the opportunity to compete for such contracts.

~~E.~~ *F.* VITA shall allow private institutions of higher education that are (i)(a) chartered in Virginia or (b) chartered by an Act of Congress in 1821 and that have owned and operated since 1991 a campus with a significant presence in the Commonwealth and (ii) granted tax-exempt status under § 501(c)(3) of the Internal Revenue Code to purchase directly from contracts established for state agencies and public bodies by VITA.

~~F.~~ *G.* This section shall not be construed or applied so as to infringe upon, in any manner, the responsibilities for accounting systems assigned to the Comptroller under § 2.2-803.

~~G.~~ *H.* The Comptroller shall not issue any warrant upon any voucher issued by a ~~state~~ *an executive branch* agency covering the purchase of any information technology ~~and telecommunications goods and services~~ when such purchases are made in violation of any provision of this chapter or the Virginia Public Procurement Act (§ 2.2-4300 et seq.).

~~H.~~ *I.* Intentional violations of centralized purchasing requirements for information technology ~~and technology and telecommunications goods and services~~ pursuant to this chapter by a ~~state~~ *an executive branch* agency, continued after notice from the Governor to desist, shall constitute malfeasance in office and shall subject the officer responsible for the violation to suspension or removal from office, as may be provided in law in other cases of malfeasance.

§ 2.2-2013. Internal service and special funds.

A. There is established the Information Technology and Management Internal Service Fund to be administered by VITA.

B. There is established the Acquisition Services Special Fund to be administered by VITA and used to finance procurement and contracting activities and programs unallowable for federal fund reimbursement.

C. Upon written request of the ~~Chief Information Officer~~ *CIO*, the Joint Legislative Audit and Review Commission may direct the Comptroller to establish internal service fund accounts on his books and record the receipts and expenditures for appropriate functions of VITA. Charges for services rendered sufficient to offset costs involved in these operations shall be established.

D. All users of services provided for in this chapter administered by VITA shall be assessed a surcharge, which shall be deposited in the appropriate fund. This charge shall be an amount sufficient to allow VITA to finance the operations and staff of the services offered.

E. Additional moneys necessary to establish these funds or provide for the administration of the activities of VITA may be advanced from the general account of the state treasury.

F. The CIO shall direct that the following activities be conducted with respect to VITA's internal service funds:

1. VITA shall establish fee schedules for the collection of fees from users when general fund appropriations are not available for the services rendered.

2. VITA shall develop and implement information, billing, and collections methods that will assist state agencies in analyzing and effectively managing their use of VITA's services, and which will allow VITA to forecast service demands and balances of its internal service funds.

3. By September 1 of each year, VITA shall submit biennial projections of future revenues and expenditures for each internal service fund and estimates of any anticipated changes to fee schedules to the Joint Legislative Audit and Review Commission and the Department of Planning and Budget.

4. In the event that changes to fee schedules or rates are required, the CIO shall submit documentation to the Joint Legislative Audit and Review Commission and the Department of Planning and Budget no later than September 1 prior to the fiscal year in which the new or revised rates are to take effect so that the impact of the rate changes can be considered for inclusion in the executive budget submitted to the General Assembly pursuant to § 2.2-1508. In emergency circumstances, deviations from this approach shall be approved in advance by the Joint Legislative Audit and Review Commission.

§ 2.2-2014. Submission of information technology plans by state agencies and public institutions

of higher education; designation of technology resource.

A. All state executive branch agencies and public institutions of higher education shall prepare and submit information technology strategic plans to the CIO for review and approval. All state executive branch agencies and public institutions of higher education shall maintain current information technology plans that have been approved by the CIO.

B. The head of each state executive branch agency shall designate an existing employee to be the agency's information technology resource who shall be responsible for compliance with the procedures, policies, standards, and guidelines established by the CIO.

§ 2.2-2016. Division of Project Management established.

There is established within VITA a Division of Project Management (the Division). The CIO and the Division shall exercise the powers and duties conferred in this article.

§ 2.2-2016.1. Additional powers and duties of the CIO relating to project management.

A. The CIO shall have the following duties related to the management of information technology projects:

1. Develop policies, standards, and guidelines that require the Division to review and recommend to the CIO Commonwealth information technology projects proposed by executive branch agencies. Such policies, standards, and guidelines shall include in the review an assessment of the (i) degree to which the project is consistent with the Commonwealth's overall strategic plan; (ii) technical feasibility of the project; (iii) benefits to the Commonwealth of the project, including customer service improvements; (iv) risks associated with the project; (v) continued funding requirements; and (vi) past performance by the executive branch agency on other projects.

2. Develop a Commonwealth Project Management Standard for information technology projects by executive branch agencies that establishes a methodology for the initiation, planning, execution, and closeout of information technology projects and related procurements. Such methodology shall include the establishment of appropriate oversight for information technology projects. The basis for the governance and oversight of information technology projects shall include, but not be limited to, an assessment of the project's risk and complexity. The Commonwealth Project Management Standard shall require that all such projects conform to the Commonwealth strategic plan for information technology developed and approved pursuant to subdivision A 3 of § 2.2-2007.1 and the strategic plans of agencies developed and approved pursuant to § 2.2-2014. All executive branch agencies shall conform to the requirements of the Commonwealth Project Management Standard.

3. Establish minimum qualifications and training standards for project managers.

4. Establish an information clearinghouse that identifies best practices and new developments and contains detailed information regarding the Commonwealth's previous experiences with the development of major information technology projects.

5. Review and approve or disapprove the selection or termination of any Commonwealth information technology project. The CIO shall disapprove any executive branch agency request to initiate a major information technology project or related procurement if funding for such project has not been included in the budget bill in accordance with § 2.2-1509.3, unless the Governor has determined that an emergency exists and a major information technology project is necessary to address the emergency. The CIO shall disapprove any Commonwealth information technology projects that do not conform to the Commonwealth strategic plan for information technology developed and approved pursuant to subdivision A 3 of § 2.2-2007.1 or to the strategic plan of executive branch agencies developed and approved pursuant to § 2.2-2014.

6. Establish Internal Agency Oversight Committees and Secretariat Oversight Committees as necessary and in accordance with § 2.2-2021.

B. The CIO may direct the modification, termination, or suspension of any Commonwealth information technology project that, as the result of a periodic review authorized by subdivision A 5 of § 2.2-2007, has not met the performance measures agreed to by the CIO and sponsoring executive branch agency, or if he otherwise deems such action appropriate and consistent with the terms of any affected contracts.

Nothing in this subsection shall be construed to supersede the responsibility of a board of visitors for the management and operation of a public institution of higher education.

The provisions of this subsection shall not apply to research projects, research initiatives, or instructional programs at public institutions of higher education. However, technology investments in research projects, research initiatives, or instructional programs at such institutions estimated to cost \$1 million or more of general fund appropriations may be reviewed as provided in subdivision A 5 of § 2.2-2007. The CIO and the Secretary of Education, in consultation with public institutions of higher education, shall develop and provide to such institution criteria to be used in determining whether projects are mission-critical.

§ 2.2-2017. Powers and duties of the Division.

The Division shall have the power and duty to:

1. Implement the approval process for information technology projects developed in accordance with the Commonwealth Project Management Standard;

2. Assist the CIO in the development and implementation of project management policies, standards, and guidelines and methodologies to be used for information technology projects in accordance with this article;

3. Provide ongoing assistance and support to ~~state executive branch agencies and public institutions of higher education~~ in the development of information technology projects;

4. Establish a program providing cost-effective training to *executive branch* agency project managers;

5. Review information management and information technology plans submitted by *executive branch agencies and public institutions of higher education* and recommend to the CIO the approval of such plans and any amendments thereto;

6. Monitor the implementation of information management and information technology plans and periodically report its findings to the CIO;

7. Review and recommend ~~to the CIO~~ information technology projects based on ~~criteria~~ *the policies, standards, and guidelines* developed pursuant to ~~§ 2.2-2007~~ that assess the (i) degree to which the project is consistent with the Commonwealth's overall strategic plan; (ii) technical feasibility of the project; (iii) benefits to the Commonwealth of the project, including customer service improvements; (iv) risks associated with the project; (v) continued funding requirements; and (vi) past performance by the agency on other projects *§ 2.2-2016.1*;

8. Provide oversight for *state executive branch* agency information technology projects; and

9. Report on a quarterly basis to the CIO, the Secretary, the Governor, the Information Technology Advisory Council, the Joint Legislative Audit and Review Commission, the Auditor of Public Accounts, the House Appropriations Committee, the Senate Finance Committee, and the Joint Commission on Technology and Science the status and performance of each major information technology project and related procurement conducted by any *state executive branch agency or institution*.

§ 2.2-2018.1. Project and procurement investment business case approval.

A. ~~State Executive branch agencies and public institutions of higher education~~ shall obtain CIO approval prior to the initiation of any Commonwealth information technology project or procurement. When selecting an information technology investment, *state executive branch agencies and public institutions of higher education* shall submit to the Division an investment business case, outlining the business value of the investment, the proposed technology solution, if known, and an explanation of how the project will support the agency strategic plan, the agency's secretariat's strategic plan, and the Commonwealth strategic plan for information technology developed and approved pursuant to ~~§ 2.2-2007 subdivision A 3 of § 2.2-2007.1~~. The Division may require the submission of additional information if needed to adequately review any such proposal.

B. The Division shall review each investment business case submitted in accordance with this section and recommend its approval or rejection to the CIO pursuant to the policies and procedures developed in ~~§ 2.2-2007~~ *2.2-2016.1*.

C. In accordance with policies and standards outlined in the Commonwealth Project Management Standard, the CIO shall review the business case for any Commonwealth information technology project or procurement and approve or disapprove.

§ 2.2-2020. Procurement approval for information technology projects.

~~The~~ *An executive branch* agency shall submit a copy of any Invitation for Bid (IFB) or Request for Proposal (RFP) ~~for a procurement related to an information technology project~~ to the Division. The Division shall review the IFB or RFP and recommend its approval or rejection to the CIO. The agency shall submit a copy of any proposed contract or final contract to the Division. The Division shall review the proposed contract or final contract and recommend its approval or rejection to the CIO. A project shall be granted project initiation approval as provided by the Commonwealth Project Management Standard before the award of any contract.

§ 2.2-2021. Project oversight committees.

A. Whenever the project charter has been approved for an enterprise information technology project, the Secretary shall establish an Internal Agency Oversight Committee (IAOC) ~~and a Secretariat Oversight Committee (SOC)~~. ~~Whenever the project charter has been approved for any other Commonwealth information technology project, the CIO shall establish an IAOC.~~ The IAOC shall represent all business or functional stakeholders of the project, including stakeholders in other agencies, assure that all stakeholders have the opportunity to work together toward a mutually beneficial integrated solution, have the authority to approve or reject any changes in the project's scope, schedule, or budget, provide oversight and direction to the project, and review and approve the schedule baseline and all project documentation. ~~The SOC shall represent all business or functional stakeholders of the project, including stakeholders in other secretariats, validate the proposed project business case, review and make recommendations on changes in the project's scope, schedule, or budget, and review Independent~~

736 *Verification and Validation reports and recommend corrective actions if needed.*

737 B. Whenever the project charter has been approved for an enterprise information technology project,
738 the Secretary shall establish a Secretariat Oversight Committee (SOC). Whenever the project charter has
739 been approved for any other Commonwealth information technology project, the CIO shall establish an
740 SOC. The SOC shall represent all business or functional stakeholders of the project including
741 stakeholders in other secretariats, validate the proposed project business case, review and make
742 recommendations on changes in the project's scope, schedule or budget, and review Independent
743 Verification and Validation reports and recommend corrective actions if needed *For all other projects,*
744 *other than enterprise information technology projects, the CIO shall establish an IAOC and an SOC in*
745 *accordance with the Commonwealth Project Management Standard.*

746 **§ 2.2-2023. Virginia Technology Infrastructure Fund created; contributions.**

747 A. The Virginia Technology Infrastructure Fund (the Fund) is created in the state treasury. The Fund
748 is to be used to fund major information technology projects or to pay private partners as authorized in
749 subsection B C of § 2.2-2007.

750 B. The Fund shall consist of: (i) the transfer of general and nongeneral fund appropriations from
751 state executive branch agencies which represent savings that accrue from reductions in the cost of
752 information technology and communication services;; (ii) the transfer of general and nongeneral fund
753 appropriations from state executive branch agencies which represent savings from the implementation of
754 information technology enterprise projects;; (iii) funds identified pursuant to subsection B C of
755 § 2.2-2007;; (iv) such general and nongeneral fund fees or surcharges as may be assessed to executive
756 branch agencies for enterprise technology projects;; (v) gifts, grants, or donations from public or private
757 sources;; and (vi) such other funds as may be appropriated by the General Assembly. Savings shall be
758 as identified by the CIO through a methodology reviewed by the ITAC and approved by the Secretary
759 of Finance. The Auditor of Public Accounts shall certify the amount of any savings identified by the
760 CIO. For public institutions of higher education, however, savings shall consist only of that portion of
761 total savings that represent general funds. The State Comptroller is authorized to transfer cash consistent
762 with appropriation transfers. Appropriated funds from federal sources are exempted from transfer. Except
763 for funds to pay private partners as authorized in subsection B C of § 2.2-2007, moneys in the Fund
764 shall only be expended as provided by the appropriation act.

765 Interest earned on the Fund shall be credited to the Fund. The Fund shall be permanent and
766 nonreverting. Any unexpended balance in the Fund at the end of the biennium shall not be transferred to
767 the general fund of the state treasury.

768 **§ 2.2-2027. Powers and duties of the Division; Division coordinator.**

769 A. The powers and duties of the Division shall include:

- 770 1. Requesting the services, expertise, supplies and facilities of VITA from the CIO on issues
771 concerning the Division;
- 772 2. Accepting grants from the United States government and agencies and instrumentalities thereof
773 and any other source. To those ends, the Division shall have the power to comply with such conditions
774 and execute such agreements as may be necessary or desirable;
- 775 3. Fixing, altering, charging, and collecting rates, rentals, and other charges for the use or sale of
776 products of, or services rendered by, the Division, at rates which reflect the fair market value;
- 777 4. Soliciting, receiving, and considering proposals for funding projects or initiatives from any state or
778 federal agency, local or regional government, public institution of higher education, nonprofit
779 organization, or private person or corporation;
- 780 5. Soliciting and accepting funds, goods and in-kind services that are part of any accepted project
781 proposal;
- 782 6. Establishing ad hoc committees or project teams to investigate related technology or technical
783 issues and providing results and recommendations for Division action; and
- 784 7. Establishing such bureaus, sections or units as the Division deems appropriate to carry out its
785 powers and duties.

786 B. The Coordinator shall:

- 787 1. Oversee the development of and recommend to VITA the ~~promulgation~~ development of those
788 policies, standards, and guidelines required to support state and local government exchange, acquisition,
789 storage, use, sharing and distribution of geographic or base map data and related technologies;
- 790 2. Foster the development of a coordinated comprehensive system for providing ready access to
791 electronic state government geographic data products for individuals, businesses, and other entities;
- 792 3. Initiate and manage projects or conduct procurement activities relating to the development or
793 acquisition of geographic data or statewide base map data or both;
- 794 4. Plan for and coordinate the development or procurement of priority geographic base map data;
- 795 5. Develop, maintain, and provide, in the most cost-effective manner, access to the catalog of
796 Virginia geographic data and governmental geographic data users;

797 6. Provide, upon request, advice and guidance on all agreements and contracts from all branches of
798 state government for geographic data acquisition and design and the installation and maintenance of
799 geographic information systems;

800 7. Compile a data catalog consisting of descriptions of GIS coverages maintained by individual *state*
801 *executive branch* and local government agencies;

802 Nothing in this article shall be construed to require that GIS data be physically delivered to the
803 Division. All *state executive branch* agencies that maintain GIS databases shall report to the Division the
804 details of the data that they develop, acquire, and maintain. Each agency shall submit quarterly reports
805 to the Division specifying all updates to existing data as well as all data development and acquisition
806 currently in progress. Data exempt from the Virginia Freedom of Information Act (§ 2.2-3700 et seq.)
807 need not be reported to the Division.

808 8. Identify and collect information and technical requirements to assist the Division in setting
809 priorities for the development of state digital geographic data and base maps that meet the needs of state
810 agencies, institutions of higher education, and local governments;

811 9. Provide services, geographic data products, and access to the repository at rates established by the
812 Division; and

813 10. Ensure the compliance of those policies, standards, and guidelines developed by VITA required
814 to support and govern the security of state and local government exchange, acquisition, storage, use,
815 sharing, and distribution of geographic or base map data and related technologies.

816 **§ 2.2-2699.6. Powers and duties of the ITAC.**

817 A. The ITAC shall have the power and duty to:

818 1. Adopt rules and procedures for the conduct of its business;

819 2. Advise the CIO on the development of all major information technology projects as defined in
820 § 2.2-2006;

821 3. Advise the CIO on strategies, standards, and priorities for the use of information technology for
822 *state executive branch* agencies in the *executive branch of state government*;

823 4. Advise the CIO on developing the ~~two-year~~ *six-year* plan for information technology projects;

824 5. Advise the CIO on statewide technical and data standards for information technology and related
825 systems, including the utilization of nationally recognized technical and data standards for health
826 information technology systems or software purchased by a state agency of the Commonwealth;

827 6. Advise the CIO on statewide information technology architecture and related system *technical and*
828 *data* standards;

829 7. Advise the CIO on assessing and meeting the Commonwealth's business needs through the
830 application of information technology;

831 8. Advise the CIO on the prioritization, development, and implementation of enterprise-wide
832 technology applications; annually review all *executive branch* agency technology applications budgets;
833 and advise the CIO on infrastructure expenditures; and

834 9. Advise the CIO on the development, implementation, and execution of a technology applications
835 governance framework for executive branch agencies. Such framework shall establish the categories of
836 use by which technology applications shall be classified, including but not limited to enterprise-wide,
837 multiagency, or agency-specific. The framework shall also provide the policies and procedures for
838 determining within each category of use (i) the ownership and sponsorship of applications, (ii) the
839 proper development of technology applications, (iii) the schedule for maintenance or enhancement of
840 applications, and (iv) the methodology for retirement or replacement of applications. ITAC shall include
841 the participation of *executive branch* agency leaders who are necessary for defining agency business
842 needs, as well as agency information technology managers who are necessary for overseeing technology
843 applications performance relative to agency business needs. Agency representatives shall assist ITAC in
844 determining the potential information technology solutions that can meet agency business needs, as well
845 as how those solutions may be funded.

846 B. Definitions.

847 As used in this section, the term "technology:

848 "*Executive branch agency*" has the same meaning as set forth in § 2.2-2006.

849 "*Technology applications*" includes, but is not limited to, hardware, software, maintenance, facilities,
850 contractor services, goods, and services that promote business functionality and facilitate the storage,
851 flow, use or processing of information by *executive branch* agencies of the Commonwealth in the
852 execution of their business activities.

853 **§ 2.2-3501. Definitions.**

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

855 "Access" means the ability to receive, use, and manipulate data and operate controls included in
856 information technology.

857 "Blind" or "visually impaired" individual means an individual who has: (i) a visual acuity of 20/200
858 or less in the better eye with correcting lenses or has a limited field of vision so that the widest

diameter of the visual field subtends an angle no greater than 20 degrees; (ii) a medically indicated expectation of visual deterioration; or (iii) a medically diagnosed limitation in visual functioning that restricts the individual's ability to read and write standard print at levels expected of individuals of comparable ability.

"Covered entity" means all state agencies, public institutions of higher education, and political subdivisions of the Commonwealth.

"Information technology" means all electronic information processing hardware and software, including telecommunications.

"Nonvisual" means synthesized speech, Braille, and other output methods not requiring sight.

"Public broadcasting services" means the acquisition, production, and distribution by public broadcasting stations of noncommercial educational, instructional, informational, or cultural television and radio programs and information that may be transmitted by means of electronic communications, and related materials and services provided by such stations.

"Telecommunications" means the transmission of information, images, pictures, voice, or data by radio, video, or other electronic or impulse means, but ~~shall~~ does not include public broadcasting services as defined in § 2.2-2006.

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

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

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

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

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

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

5. The College of William and Mary in Virginia, Virginia Commonwealth University, the University of Virginia, and Virginia Polytechnic Institute and State University in the selection of services related to the management and investment of their endowment funds, endowment income, gifts, all other nongeneral fund reserves and balances, or local funds of or held by the College or Universities pursuant to § 23-44.1, 23-50.10:01, 23-76.1, or 23-122.1. However, selection of these services shall be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.) as required by § 23-44.1, 23-50.10:01, 23-76.1, and 23-122.1.

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

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

8. The purchase of goods and services by agencies of the legislative branch that may be specifically exempted therefrom by the Chairman of the Committee on Rules of either the House of Delegates or the Senate. Nor shall the contract review provisions of § ~~2.2-2014~~ 2.2-2012 apply to such procurements. The exemption shall be in writing and kept on file with the agency's disbursement records.

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

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

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are

reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

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

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

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

The method for procurement of professional services through competitive negotiation set forth in §§ 2.2-4303.1 and 2.2-4303.2 shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board that makes purchases through its public school foundation or purchases educational technology through its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be exempt from the provisions of this chapter, except, relative to such purchases, the school board shall comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

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

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

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

16. The Eastern Virginia Medical School in the selection of services related to the management and investment of its endowment and other institutional funds. The selection of these services shall, however, be governed by the Uniform Prudent Management of Institutional Funds Act (§ 64.2-1100 et seq.).

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

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

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

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

21. [Expired].

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

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

A. 1. The State Council shall develop and revise from time to time, in consultation with the respective chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health or their designees, representatives of public

institutions of higher education, and such other state officials as may be designated by the Governor, objective measures of educational-related performance and institutional performance benchmarks for such objective measures. At a minimum, the State Council shall develop objective measures and institutional performance benchmarks for the goals and objectives set forth in subdivisions B 1 through B 10 of § 23-38.88.

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

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

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

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

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

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

D. Notwithstanding any other provision of this section, no institution shall be required to submit documentation that it has met the financial and administrative management and educational-related performance benchmarks set forth in the general appropriations act for the fiscal years 2011-2012 and 2012-2013. If an institution is certified by the State Council as having met the financial and administrative management and educational-related performance benchmarks for the fiscal year 2010-2011, then such institution shall be entitled to the financial benefits set forth in subdivision B 14 of § 2.2-1124, subsection C of § 2.2-1132, subdivisions 4 and 5 of § 2.2-1149, subsection C of § 2.2-1150, subdivision C 2 of § 2.2-1153, § 2.2-1609, subdivision A 4 of ~~§ 2.2-2007 B 3 of~~ § 2.2-2007.1, subsection E of § 2.2-2901, § 2.2-5005, subdivisions 1 and 3 of § 23-38.90, and subsection C of § 36-98.1 for the fiscal years 2011-2012 and 2012-2013.

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

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

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

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

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

1043 by the Division and the Office of the Attorney General;
1044 4. To acquire easements as provided in subdivision 4 of § 2.2-1149;
1045 5. To enter into an operating/income lease or capital lease pursuant to the conditions and provisions
1046 provided in subdivision 5 of § 2.2-1149;
1047 6. To convey an easement pertaining to any property such institution owns or controls as provided in
1048 subsection C of § 2.2-1150;
1049 7. In accordance with the conditions and provisions of subdivision C 2 of § 2.2-1153, to sell surplus
1050 real property valued at less than \$5 million, which is possessed and controlled by the institution;
1051 8. For purposes of compliance with § 2.2-4310, to procure goods, services, and construction from a
1052 vendor that the institution has certified as a small, women-owned, and minority-owned business
1053 enterprise pursuant to the conditions and provisions provided in § 2.2-1609;
1054 9. To be exempt from review of their budget request for information technology by the CIO as
1055 provided in subdivision A 4 of ~~§ 2.2-2007~~ B 3 of § 2.2-2007.1;
1056 10. To be allowed to establish policies for the designation of administrative and professional faculty
1057 positions at the institution pursuant to the conditions and provisions provided in subsection E of
1058 § 2.2-2901;
1059 11. To receive the financial benefits described under § 2.2-5005 pursuant to the conditions and
1060 provisions of such section;
1061 12. To be exempt from reporting its purchases to the Secretary of Education, provided that all
1062 purchases, including sole source purchases, are placed through the Commonwealth's electronic
1063 procurement system using proper system codes for the methods of procurement;
1064 13. To utilize as methods of procurement a fixed price, design-build or construction management
1065 contract notwithstanding the provisions of § 2.2-4306; and
1066 14. The restructured financial and operational authority set forth in Article 2 (§ 23-38.90) and Article
1067 3 (§ 23-38.91 et seq.).
1068 No such authority shall be granted unless the institution meets the conditions set forth in this chapter.
1069 B. The Board of Visitors of a public institution of higher education shall commit to the Governor
1070 and the General Assembly by August 1, 2005, through formal resolution adopted according to its own
1071 bylaws, to meeting the state goals specified below, and shall be responsible for ensuring that such goals
1072 are met, in addition to such other responsibilities as may be prescribed by law. Each such institution
1073 shall commit to the Governor and the General Assembly to:
1074 1. Consistent with its institutional mission, provide access to higher education for all citizens
1075 throughout the Commonwealth, including underrepresented populations, and, consistent with subdivision
1076 4 of § 23-9.6:1 and in accordance with anticipated demand analysis, meet enrollment projections and
1077 degree estimates as agreed upon with the State Council of Higher Education for Virginia. Each such
1078 institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is
1079 met;
1080 2. Consistent with § 23-38.87:17, ensure that higher education remains affordable, regardless of
1081 individual or family income, and through a periodic assessment, determine the impact of tuition and fee
1082 levels net of financial aid on applications, enrollment, and student indebtedness incurred for the payment
1083 of tuition and fees;
1084 3. Offer a broad range of undergraduate and, where appropriate, graduate programs consistent with
1085 its mission and assess regularly the extent to which the institution's curricula and degree programs
1086 address the Commonwealth's need for sufficient graduates in particular shortage areas, including specific
1087 academic disciplines, professions, and geographic regions;
1088 4. Ensure that the institution's academic programs and course offerings maintain high academic
1089 standards, by undertaking a continuous review and improvement of academic programs, course
1090 availability, faculty productivity, and other relevant factors;
1091 5. Improve student retention such that students progress from initial enrollment to a timely
1092 graduation, and that the number of degrees conferred increases as enrollment increases;
1093 6. Consistent with its institutional mission, develop articulation, dual admissions, and guaranteed
1094 admissions agreements with all Virginia community colleges and offer dual enrollment programs in
1095 cooperation with high schools;
1096 7. Actively contribute to efforts to stimulate the economic development of the Commonwealth and
1097 the area in which the institution is located, and for those institutions subject to a management agreement
1098 set forth in Article 3 (§ 23-38.91 et seq.), in areas that lag the Commonwealth in terms of income,
1099 employment, and other factors;
1100 8. Consistent with its institutional mission, increase the level of externally funded research conducted
1101 at the institution and facilitate the transfer of technology from university research centers to private
1102 sector companies;
1103 9. Work actively and cooperatively with elementary and secondary school administrators, teachers,
1104 and students in public schools and school divisions to improve student achievement, upgrade the

knowledge and skills of teachers, and strengthen leadership skills of school administrators;

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

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

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

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

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

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

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

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

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

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

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

c. The institution agrees to reimburse the Commonwealth for any additional costs to the

Commonwealth in providing health or other group insurance benefits to employees, and in undertaking any risk management program, that are attributable to the institution's exercise of any restructured financial or operational authority set forth in Article 3 (§ 23-38.91 et seq.). The institution's agreement to reimburse the Commonwealth for such additional costs shall be expressly included in each management agreement with the institution. The Secretary of Finance and the Secretary of Administration, in consultation with the Virginia Retirement System and the affected institutions, shall establish procedures for determining any amounts to be paid by each institution and a mechanism for transferring the appropriate amounts directly and solely to the programs whose costs have been affected.

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

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

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

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

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

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

5. A management agreement with a public institution of higher education shall not grant any of the restructured financial or operational authority set forth in Article 3 (§ 23-38.91 et seq.) to the Virginia

Cooperative Extension and Agricultural Experiment Station, the University of Virginia College at Wise, or the Virginia Institute of Marine Sciences or to an affiliated entity of the institution unless such intent, as well as the degree of the restructured financial or operational authority to be granted, is expressly included in the management agreement.

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

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

§ 58.1-1840.1. Virginia Tax Amnesty Program established.

A. There is hereby established the Virginia Tax Amnesty Program. It is the intent of this program to improve voluntary compliance with the tax laws and to increase and to accelerate collections of certain taxes owed to the Commonwealth.

B. The Virginia Tax Amnesty Program shall be administered by the Department of Taxation, and any person, individual, corporation, estate, trust or partnership required to file a return or to pay any tax administered or collected by the Department of Taxation shall be eligible to participate, subject to the requirements set forth below and guidelines established by the Tax Commissioner.

C. The Tax Commissioner shall establish guidelines and rules for the procedures for participation and any other rules that are deemed necessary by the Tax Commissioner. The guidelines and rules issued by the Tax Commissioner regarding the Virginia Tax Amnesty Program shall be exempt from the Administrative Process Act (§ 2.2-4000 et seq.).

D. The Virginia Tax Amnesty Program shall have the following features:

1. The program shall be conducted during the period July 1, 2009, through June 30, 2010, and shall not last less than 60 nor more than 75 days. The exact dates of the program shall be established by the Tax Commissioner.

2. All civil or criminal penalties assessed or assessable, as provided in this title, including the addition to tax under §§ 58.1-492 and 58.1-504, and one-half of the interest assessed or assessable, as provided in this title, which are the result of nonpayment, underpayment, nonreporting or underreporting of tax liabilities, shall be waived upon receipt of the payment of the amount of taxes and interest owed, with the following exceptions:

a. No person, individual, corporation, estate, trust or partnership currently under investigation or prosecution for filing a fraudulent return or failing to file a return with the intent to evade tax shall qualify to participate.

b. No person, individual, corporation, estate, trust or partnership shall be eligible to participate in the program with respect to any assessment outstanding for which the date of assessment is less than 90 days prior to the first day of the program or with respect to any liability arising from the failure to file a return for which the due date of the return is less than 90 days prior to the first day of the program.

c. No person, individual, corporation, estate, or trust shall be eligible to participate in the program with respect to any tax liability from the income taxes imposed by §§ 58.1-320, 58.1-360 and 58.1-400, if the tax liability is attributable to taxable years beginning on and after January 1, 2008.

E. For the purpose of computing the outstanding balance due because of the nonpayment, underpayment, nonreporting or underreporting of any tax liability that has not been assessed prior to the first day of the program, the rate of interest specified for omitted taxes and assessments under § 58.1-15 shall not be applicable. The Tax Commissioner shall, instead, establish one interest rate to be used for each taxable year that approximates the average "underpayment rate" specified under § 58.1-15 for the five-year period immediately preceding the program.

F.1. If any taxpayer eligible for amnesty under this section and under the rules and guidelines established by the Tax Commissioner retains any outstanding balance after the close of the Virginia Tax

1289 Amnesty Program because of the nonpayment, underpayment, nonreporting or underreporting of any tax
1290 liability eligible for relief under the Virginia Tax Amnesty Program, then such balance shall be subject
1291 to a 20 percent penalty on the unpaid tax. This penalty is in addition to all other penalties that may
1292 apply to the taxpayer.

1293 2. Any taxpayer who defaults upon any agreement to pay tax and interest arising out of a grant of
1294 amnesty is subject to reinstatement of the penalty and interest forgiven and the imposition of the penalty
1295 under this section as though the taxpayer retained the original outstanding balance at the close of the
1296 Virginia Tax Amnesty Program.

1297 G. For the purpose of implementing the Virginia Tax Amnesty Program, the Department is exempt
1298 from ~~§§ 2.2-2015 subsection B of § 2.2-2016.1~~ and §§ 2.2-2018.1 through 2.2-2021 pertaining to the
1299 Virginia Information Technologies Agency's project management and procurement oversight.

1300 **2. That §§ 2.2-2008, 2.2-2010, and 2.2-2015 of the Code of Virginia are repealed.**