

# VIRGINIA ACTS OF ASSEMBLY -- 2017 SESSION

## CHAPTER 314

*An Act to amend and reenact §§ 13.1-543, 13.1-1102, 23.1-107, 23.1-200, 23.1-201, 23.1-203, 23.1-210, 23.1-227, 23.1-301, 23.1-308, 23.1-634, 23.1-712, 23.1-1004, 23.1-1014, 23.1-1026, 23.1-1211, 23.1-1225, 23.1-1300, 23.1-1303, 23.1-1305, 23.1-2308, 23.1-2404, 23.1-2408, 23.1-2409, 23.1-2413, 23.1-2415, 23.1-2607, 23.1-2631, 23.1-2702, 23.1-2903, 23.1-3131, 23.1-3133, 23.1-3208, 23.1-3216, 23.1-3217, and 25.1-100 of the Code of Virginia, relating to higher education.*

[H 1538]

Approved March 13, 2017

### **Be it enacted by the General Assembly of Virginia:**

**1. That §§ 13.1-543, 13.1-1102, 23.1-107, 23.1-200, 23.1-201, 23.1-203, 23.1-210, 23.1-227, 23.1-301, 23.1-308, 23.1-634, 23.1-712, 23.1-1004, 23.1-1014, 23.1-1026, 23.1-1211, 23.1-1225, 23.1-1300, 23.1-1303, 23.1-1305, 23.1-2308, 23.1-2404, 23.1-2408, 23.1-2409, 23.1-2413, 23.1-2415, 23.1-2607, 23.1-2631, 23.1-2702, 23.1-2903, 23.1-3131, 23.1-3133, 23.1-3208, 23.1-3216, 23.1-3217, and 25.1-100 of the Code of Virginia are amended and reenacted as follows:**

#### **§ 13.1-543. Definitions.**

A. As used in this chapter:

"Eligible employee stock ownership plan" means an employee stock ownership plan as such term is defined in § 4975(e)(7) of the Internal Revenue Code of 1986, as amended, sponsored by a professional corporation and with respect to which:

1. All of the trustees of the employee stock ownership plan are individuals who are duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter; however, if a conflict of interest exists for one or more trustees with respect to a specific issue or transaction, such trustees may appoint a special independent trustee or special fiduciary, who is not duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter, which special independent trustee shall be authorized to make decisions only with respect to the specific issue or transaction that is the subject of the conflict;

2. The employee stock ownership plan provides that no shares, fractional shares, or rights or options to purchase shares of the professional corporation shall at any time be issued, sold, or otherwise transferred directly to anyone other than an individual duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter, unless such shares are transferred as a plan distribution to a plan beneficiary and subject to immediate repurchase by the professional corporation, the employee stock ownership plan or another person authorized to hold such shares; however:

a. With respect to a professional corporation rendering the professional services of public accounting or certified public accounting:

(1) The employee stock ownership plan may permit individuals who are not duly licensed or otherwise legally authorized to render these services to participate in such plan, provided such individuals are employees of the corporation and hold less than a majority of the beneficial interests in such plan; and

(2) At least ~~51%~~ *51 percent* of the total of allocated and unallocated equity interests in the corporation sponsoring such employee stock ownership plan are held (i) by the trustees of such employee stock ownership plan for the benefit of persons holding a valid CPA certificate as defined in § 54.1-4400, with unallocated shares allocated for these purposes pursuant to § 409(p) of the Internal Revenue Code of 1986, as amended, or (ii) by individual employees holding a valid CPA certificate separate from any interests held by such employee stock ownership plan; and

b. With respect to a professional corporation rendering the professional services of architects, professional engineers, land surveyors, landscape architects, or certified interior designers, the employee stock ownership plan may permit individuals who are not duly licensed to render the services of architects, professional engineers, land surveyors, or landscape architects, or individuals legally authorized to use the title of certified interior designers to participate in such plan, provided such individuals are employees of the corporation and together hold not more than one-third of the beneficial interests in such plan, and that the total of the shares (i) held by individuals who are employees but not duly licensed to render such services or legally authorized to use a title and (ii) held by the trustees of such employee stock ownership plan for the benefit of individuals who are employees but not duly licensed to render such services or legally authorized to use a title, shall not exceed one-third of the shares of the corporation; and

3. The professional corporation, the trustees of the employee stock ownership plan, and the other

shareholders of the professional corporation comply with the foregoing provisions of the plan.

"Professional business entity" means any entity as defined in § 13.1-603 that is duly licensed or otherwise legally authorized under the laws of the Commonwealth or the laws of the jurisdiction under whose laws the entity is formed to render the same professional service as that for which a professional corporation or professional limited liability company may be organized, including, but not limited to, (i) a professional limited liability company as defined in § 13.1-1102, (ii) a professional corporation as defined in this subsection, or (iii) a partnership that is registered as a registered limited liability partnership registered under § 50-73.132, all of the partners of which are duly licensed or otherwise legally authorized to render the same professional services as those for which the partnership was organized.

"Professional corporation" means a corporation whose articles of incorporation set forth a sole and specific purpose permitted by this chapter and that is either (i) organized under this chapter for the sole and specific purpose of rendering professional service other than that of architects, professional engineers, land surveyors, or landscape architects, or using a title other than that of certified interior designers and, except as expressly otherwise permitted by this chapter, that has as its shareholders or members only individuals or professional business entities that are duly licensed or otherwise legally authorized to render the same professional service as the corporation, including the trustees of an eligible employee stock ownership plan or (ii) organized under this chapter for the sole and specific purpose of rendering the professional services of architects, professional engineers, land surveyors, or landscape architects, or using the title of certified interior designers, or any combination thereof, and at least two-thirds of whose shares are held by persons duly licensed within the Commonwealth to perform the services of an architect, professional engineer, land surveyor, or landscape architect, including the trustees of an eligible employee stock ownership plan, or by persons legally authorized within the Commonwealth to use the title of certified interior designer; or (iii) organized under this chapter or under Chapter 10 (§ 13.1-801 et seq.) of this title for the sole and specific purpose of rendering the professional services of one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more optometrists licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, or one or more physical therapists and physical therapist assistants licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or more practitioners of the behavioral science professions, licensed under the provisions of Chapter 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or more practitioners of audiology or speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1, or one or more clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing, or any combination of practitioners of the healing arts, optometry, physical therapy, the behavioral science professions, and audiology or speech pathology, and all of whose shares are held by or all of whose members are individuals or professional business entities duly licensed or otherwise legally authorized to perform the services of a practitioner of the healing arts, nurse practitioners, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or of a clinical nurse specialist who renders mental health services, including the trustees of an eligible employee stock ownership plan; however, nothing herein shall be construed so as to allow any member of the healing arts, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or a nurse practitioner or clinical nurse specialist to conduct his practice in a manner contrary to the standards of ethics of his branch of the healing arts, optometry, physical therapy, the behavioral science professions, audiology or speech pathology, or nursing, as the case may be.

"Professional service" means any type of personal service to the public that requires as a condition precedent to the rendering of such service or use of such title the obtaining of a license, certification, or other legal authorization and shall be limited to the personal services rendered by pharmacists, optometrists, physical therapists and physical therapist assistants, practitioners of the healing arts, nurse practitioners, practitioners of the behavioral science professions, veterinarians, surgeons, dentists, architects, professional engineers, land surveyors, landscape architects, certified interior designers, public accountants, certified public accountants, attorneys-at-law, insurance consultants, audiologists or speech pathologists, and clinical nurse specialists. For the purposes of this chapter, the following shall be deemed to be rendering the same professional service:

1. Architects, professional engineers, and land surveyors; and
2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1; nurse practitioners, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1; optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1; physical therapists and physical therapist assistants, licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1; practitioners of the behavioral science professions, licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of Title 54.1; and one or more clinical nurse specialists who render mental health services, licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and are registered with the Board of Nursing.

B. Persons who practice the healing art of performing professional clinical laboratory services within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university school that is an "educational institution" within the meaning of as that term is defined in § 23.1-1101.23.1-1100.

### **§ 13.1-1102. Definitions.**

A. As used in this chapter:

"Professional business entity" means any entity as defined in § 13.1-603 that is duly licensed or otherwise legally authorized under the laws of the Commonwealth or the laws of the jurisdiction under whose laws the entity is formed to render the same professional service as that for which a professional corporation or professional limited liability company may be organized, including, but not limited to, (i) a professional limited liability company as defined in this subsection, (ii) a professional corporation as defined in subsection A of § 13.1-543, or (iii) a partnership that is registered as a registered limited liability partnership under § 50-73.132, all of the partners of which are duly licensed or otherwise legally authorized to render the same professional services as those for which the partnership was organized.

"Professional limited liability company" means a limited liability company whose articles of organization set forth a sole and specific purpose permitted by this chapter and that is either (i) organized under this chapter for the sole and specific purpose of rendering professional service other than that of architects, professional engineers, land surveyors, or landscape architects, or using a title other than that of certified interior designers and, except as expressly otherwise permitted by this chapter, that has as its members only individuals or professional business entities that are duly licensed or otherwise legally authorized to render the same professional service as the professional limited liability company or (ii) organized under this chapter for the sole and specific purpose of rendering professional service of architects, professional engineers, land surveyors, or landscape architects or using the title of certified interior designers, or any combination thereof, and at least two-thirds of whose membership interests are held by persons duly licensed within the Commonwealth to perform the services of an architect, professional engineer, land surveyor, or landscape architect, or by persons legally authorized within the Commonwealth to use the title of certified interior designer; or (iii) organized under this chapter for the sole and specific purpose of rendering the professional services of one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more optometrists licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, or one or more physical therapists and physical therapist assistants licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or more practitioners of the behavioral science professions, licensed under the provisions of Chapter 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or more practitioners of audiology or speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1, or one or more clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing, or any combination of practitioners of the healing arts, of optometry, physical therapy, the behavioral science professions, and audiology or speech pathology and all of whose members are individuals or professional business entities duly licensed or otherwise legally authorized to perform the services of a practitioner of the healing arts, nurse practitioners, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or of a clinical nurse specialist who renders mental health services; however, nothing herein shall be construed so as to allow any member of the healing arts, optometry, physical therapy, the behavioral science professions, audiology or speech pathology or a nurse practitioner or clinical nurse specialist to conduct that person's practice in a manner contrary to the standards of ethics of that person's branch of the healing arts, optometry, physical therapy, the behavioral science professions, or audiology or speech pathology, or nursing as the case may be.

"Professional services" means any type of personal service to the public that requires as a condition precedent to the rendering of that service or the use of that title the obtaining of a license, certification, or other legal authorization and shall be limited to the personal services rendered by pharmacists, optometrists, physical therapists and physical therapist assistants, practitioners of the healing arts, nurse practitioners, practitioners of the behavioral science professions, veterinarians, surgeons, dentists, architects, professional engineers, land surveyors, landscape architects, certified interior designers, public accountants, certified public accountants, attorneys at law, insurance consultants, audiologists or speech pathologists and clinical nurse specialists. For the purposes of this chapter, the following shall be deemed to be rendering the same professional services:

1. Architects, professional engineers, and land surveyors; and
2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, physical therapists, licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, practitioners

of the behavioral science professions, licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of Title 54.1, and clinical nurse specialists who render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing.

B. Persons who practice the healing art of performing professional clinical laboratory services within a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university school that is an "educational institution" within the meaning of as that term is defined in § 23.1-1101-23.1-1100.

C. Except as expressly otherwise provided, all terms defined in § 13.1-1002 shall have the same meanings for purposes of this chapter.

**§ 23.1-107. Private institutions of higher education; human research review committees.**

The human research review committee at each ~~proprietary private institution of higher education and nonprofit private institution of higher education~~ that conducts human research, as that term is defined in § 32.1-162.16, shall submit to the Governor, the General Assembly, and the president of the institution or his designee at least annually a report on the human research projects reviewed and approved by the committee and any significant deviations from approved proposals.

**§ 23.1-200. State Council of Higher Education for Virginia established; purpose; membership; terms; officers.**

A. The State Council of Higher Education for Virginia is established to advocate for and promote the development and operation of an educationally and economically sound, vigorous, progressive, and coordinated system of higher education in the Commonwealth and lead state-level strategic planning and policy development and implementation based on research and analysis and in accordance with § 23.1-301 and subsection A of § 23.1-1002. The Council shall seek to facilitate collaboration among institutions of higher education that will enhance quality and create operational efficiencies and work with institutions of higher education and their governing boards on board development.

B. The Council shall be composed of individuals selected from the Commonwealth at large without regard to political affiliation but with due consideration of geographical representation. Nonlegislative citizen members shall have demonstrated experience, knowledge, and understanding of higher education and workforce needs. Nonlegislative citizen members shall be selected for their ability and all appointments shall be of such nature as to aid the work of the Council and inspire the highest degree of cooperation and confidence. No officer, employee, trustee, or member of the governing board of any institution of higher education, employee of the Commonwealth, member of the General Assembly, or member of the Board of Education is eligible for appointment to the Council except as specified in this section. All members of the Council are members at large who shall serve the best interests of the whole Commonwealth. No member shall act as the representative of any particular region or of any particular institution of higher education.

C. The Council shall consist of 13 members: 12 nonlegislative citizen members appointed by the Governor and one ex officio member. At least one nonlegislative citizen member shall have served as a ~~president or~~ chief executive officer of a public institution of higher education. At least one nonlegislative citizen member shall be a division superintendent or the Superintendent of Public Instruction. The President of the Virginia Economic Development Partnership Authority shall serve ex officio with voting privileges.

D. All terms shall begin July 1.

E. Nonlegislative citizen members shall serve for terms of four years. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. No nonlegislative citizen member shall serve for more than two consecutive terms; however, a nonlegislative citizen member appointed to serve an unexpired term is eligible to serve two consecutive four-year terms. No nonlegislative citizen member who has served two consecutive four-year terms is eligible to serve on the Council until at least two years have passed since the end of his second consecutive four-year term. All appointments are subject to confirmation by the General Assembly. Nonlegislative citizen members shall continue to hold office until their successors have been appointed and confirmed. Ex officio members shall serve terms coincident with their terms of office.

F. The Council shall elect a chairman and a vice-chairman from its membership. The Council shall appoint a secretary and such other officers as it deems necessary and prescribe their duties and terms of office.

G. At each meeting, the Council shall involve the chief executive officer of each public institution of higher education in its agenda. The chief executive officers shall present information and comment on issues of common interest and choose presenters to the Council from among themselves who reflect the diversity of the institutions.

H. At each meeting, the Council may involve other groups, including the presidents of private institutions of higher education, in its agenda.

**§ 23.1-201. Student advisory committee.**

A. The Council shall appoint a student advisory committee consisting of students enrolled in public *institutions of higher education* and accredited private institutions of higher education whose primary purpose is to provide collegiate or graduate education and not to provide religious training. Appointments shall be made in a manner to ensure broad student representation from among such institutions.

B. Members shall serve for terms of one year. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. Members may be reappointed to serve subsequent or consecutive terms.

C. The Council shall ensure that at least one member of the student advisory committee is reappointed each year. The student advisory committee shall elect a chairman from among its members.

D. The student advisory committee shall meet at least twice annually and advise the Council regarding such matters as may come before it.

**§ 23.1-203. Duties of Council.**

The Council shall:

1. Develop a statewide strategic plan that (i) reflects the goals set forth in subsection A of § 23.1-1002 or (ii) once adopted, reflects the goals and objectives developed pursuant to subdivision B 5 of § 23.1-309 for higher education in the Commonwealth, identifies a coordinated approach to such state and regional goals, and emphasizes the future needs for higher education in the Commonwealth at both the undergraduate and the graduate levels and the mission, programs, facilities, and location of each of the existing institutions of higher education, each public institution's six-year plan, and such other matters as the Council deems appropriate. The Council shall revise such plan at least once every six years and shall submit such recommendations as are necessary for the implementation of the plan to the Governor and the General Assembly.

2. Review and approve or disapprove any proposed change in the statement of mission of any public institution of higher education and define the mission of all newly created public institutions of higher education. The Council shall report such approvals, disapprovals, and definitions to the Governor and the General Assembly at least once every six years. No such actions shall become effective until 30 days after adjournment of the session of the General Assembly next following the filing of such a report. Nothing in this subdivision shall be construed to authorize the Council to modify any mission statement adopted by the General Assembly or empower the Council to affect, either directly or indirectly, the selection of faculty or the standards and criteria for admission of any public institution of higher education, whether relating to academic standards, residence, or other criteria. Faculty selection and student admission policies shall remain a function of the individual public institutions of higher education.

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

4. Review and approve or disapprove all enrollment projections proposed by each public institution of higher education. The Council's projections shall be organized numerically by level of enrollment and shall be used solely for budgetary, fiscal, and strategic planning purposes. The Council shall develop estimates of the number of degrees to be awarded by each public institution of higher education and include those estimates in its reports of enrollment projections. The student admissions policies for such institutions and their specific programs shall remain the sole responsibility of the individual governing boards but all baccalaureate public institutions of higher education shall adopt dual admissions policies with comprehensive community colleges as required by § 23.1-907.

5. Review and approve or disapprove all new undergraduate or graduate academic programs that any public institution of higher education proposes.

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

7. Review and approve or disapprove the establishment of any department, school, college, branch, division, or extension of any public institution of higher education that such institution proposes to establish, whether located on or off the main campus of such institution. If any organizational change is determined by the Council to be proposed solely for the purpose of internal management and the institution's curricular offerings remain constant, the Council shall approve the proposed change. Nothing

in this subdivision shall be construed to authorize the Council to disapprove the establishment of any such department, school, college, branch, division, or extension established by the General Assembly.

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

9. Develop a uniform, comprehensive data information system designed to gather all information necessary to the performance of the Council's duties. The system shall include information on admissions, enrollment, self-identified students with documented disabilities, personnel, programs, financing, space inventory, facilities, and such other areas as the Council deems appropriate. When consistent with the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.), the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.), and applicable federal law, the Council, acting solely or in partnership with the Virginia Department of Education or the Virginia Employment Commission, may contract with private entities to create de-identified student records in which all personally identifiable information has been removed for the purpose of assessing the performance of institutions and specific programs relative to the workforce needs of the Commonwealth.

10. In cooperation with public institutions of higher education, develop guidelines for the assessment of student achievement. Each such institution shall use an approved program that complies with the guidelines of the Council and is consistent with the institution's mission and educational objectives in the development of such assessment. The Council shall report each institution's assessment of student achievement in the revisions to the Commonwealth's statewide strategic plan for higher education.

11. In cooperation with the appropriate state financial and accounting officials, develop and establish uniform standards and systems of accounting, recordkeeping, and statistical reporting for public institutions of higher education.

12. Review biennially and approve or disapprove all changes in the inventory of educational and general space that any public institution of higher education proposes and report such approvals and disapprovals to the Governor and the General Assembly. No such change shall become effective until 30 days after the adjournment of the session of the General Assembly next following the filing of such report.

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

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

15. Adopt such policies and regulations as the Council deems necessary to implement its duties established by state law. Each public institution of higher education shall comply with such policies and regulations.

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

17. Require each institution of higher education formed, chartered, or established in the Commonwealth after July 1, 1980, to ensure the preservation of student transcripts in the event of institutional closure or revocation of approval to operate in the Commonwealth. An institution may ensure the preservation of student transcripts by binding agreement with another institution of higher education with which it is not corporately connected or in such other way as the Council may authorize by regulation. In the event that an institution closes or has its approval to operate in the Commonwealth revoked, the Council, through its director, may take such action as is necessary to secure and preserve the student transcripts until such time as an appropriate institution accepts all or some of the transcripts. Nothing in this subdivision shall be deemed to interfere with the right of a student to his own transcripts or authorize disclosure of student records except as may otherwise be authorized by law.

18. Require the development and submission of articulation, dual admissions, and guaranteed admissions agreements between associate-degree-granting and baccalaureate public institutions of higher education.

19. Provide periodic updates of base adequacy funding guidelines adopted by the Joint Subcommittee Studying Higher Education Funding Policies for each public institution of higher education.

20. In consultation with each public institution of higher education, develop a one-year uniform certificate of general studies program to be offered at each comprehensive community college. Such program shall ensure that a comprehensive community college student who completes the one-year certificate program is eligible to transfer all credits earned in academic subject coursework to a baccalaureate public institution of higher education upon acceptance to such baccalaureate institution.

21. Cooperate with the Board of Education in matters of interest to both public elementary and

secondary schools and public institutions of higher education, particularly in connection with coordination of the college admission requirements, coordination of teacher training programs with the public school programs, and the ~~Board's~~ *Board of Education's* Six-Year Educational Technology Plan for Virginia. The Council shall encourage public institutions of higher education to design programs that include the skills necessary for the successful implementation of such Plan.

22. Advise and provide technical assistance to the Brown v. Board of Education Scholarship Committee in the implementation and administration of the Brown v. Board of Education Scholarship Program pursuant to Chapter 34.1 (§ 30-231.01 et seq.) of Title 30.

23. Insofar as possible, seek the cooperation and utilize the facilities of existing state departments, institutions, and agencies in carrying out its duties.

24. Serve as the coordinating council for public institutions of higher education.

25. Serve as the planning and coordinating agency for all postsecondary educational programs for all health professions and occupations and make recommendations, including those relating to financing, for providing adequate and coordinated educational programs to produce an appropriate supply of properly trained personnel. The Council may conduct such studies as it deems appropriate in furtherance of the requirements of this subdivision. All state departments and agencies shall cooperate with the Council in the execution of its responsibilities under this subdivision.

26. Carry out such duties as the Governor may assign to it in response to agency designations requested by the federal government.

27. Insofar as practicable, preserve the individuality, traditions, and sense of responsibility of each public institution of higher education in carrying out its duties.

28. Insofar as practicable, seek the assistance and advice of each public institution of higher education in fulfilling its duties and responsibilities.

29. Assist the Virginia Research Investment Committee with the administration of the Virginia Research Investment Fund consistent with the provisions of Article 8 (§ 23.1-3130 et seq.) of Chapter 31.

**§ 23.1-210. Advisory services to accredited nonprofit private institutions of higher education; Private College Advisory Board.**

A. The Council shall provide advisory services to accredited nonprofit private institutions of higher education on academic and administrative matters. The Council may review and advise on joint activities, including contracts for services, between nonprofit private *institutions of higher education* and public institutions of higher education and between nonprofit private institutions of higher education and any agency or political subdivision of the Commonwealth. The Council may collect and analyze such data as may be pertinent to such activities.

B. The Council shall seek the advice of the Private College Advisory Board, and the Advisory Board shall assist the Council in the performance of its duties as required by subsection A. The Private College Advisory Board shall be composed of representatives of nonprofit private institutions of higher education and such other members as the Council may select and shall be broadly representative of nonprofit private institutions of higher education.

C. The Private College Advisory Board shall meet at least once each year.

**§ 23.1-227. Laws of the Commonwealth to apply to contracts.**

The laws of the Commonwealth shall govern any agreement, contract, or instrument of indebtedness executed between a postsecondary school and any person ~~enrolling~~ *who enrolls* in any course or program offered or to be offered by such school in the Commonwealth or any person *who is* employed or offered employment by such school in the Commonwealth.

**§ 23.1-301. Short title; objective; purposes.**

A. This chapter may be cited as the "Preparing for the Top Jobs of the 21st Century: The Virginia Higher Education Opportunity Act of 2011," the "Top Jobs Act," or "TJ21."

B. The objective of this chapter is to fuel strong economic growth in the Commonwealth and prepare Virginians for the top job opportunities in the knowledge-driven economy of the 21st century by establishing a long-term commitment, policy, and framework for sustained investment and innovation that will (i) enable the Commonwealth to build upon the strengths of its excellent higher education system and achieve national and international leadership in college degree attainment and personal income and (ii) ensure that these educational and economic opportunities are accessible and affordable for all capable and committed Virginia students.

C. In furtherance of the objective set forth in subsection B, the following purposes shall inform the development and implementation of funding policies, performance criteria, economic opportunity metrics, and recommendations required by this chapter:

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

2. To take optimal advantage of the demonstrated correlation between higher education and economic growth by investing in higher education in a manner that will generate economic growth, job creation,

personal income growth, and revenues generated for state and local government in the Commonwealth;

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

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

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

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

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

8. To realize the potential for enhanced benefits from the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.) through a sustained commitment to the principles of autonomy, accountability, affordable access, and mutual trust and obligation underlying the restructuring initiative;

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

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

**§ 23.1-308. STEM public-private partnership established; duties.**

A. To (i) increase the number of students completing degrees in the high-demand, high-impact STEM fields and other high-demand, anticipated-shortage fields such as the health care-related professions and (ii) help develop and guide the implementation of a comprehensive plan for higher degree attainment in these fields, the Secretaries of Education and Finance, in cooperation with the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health, shall form a public-private partnership comprised of private-sector leaders, distinguished representatives from the scientific community, including retired military personnel, government scientists, and researchers, educational experts, relevant state and local government officials, and such other individuals as they deem appropriate.

B. The partnership shall advise on, and may collaborate with public and private entities to develop and implement strategies to address, such priority issues as (i) determining the need for additional high-demand degree enrollment, capacity, and resources at public institutions of higher education and private institutions of higher education; (ii) incentivizing greater coordination, innovation, and private



collaboration in kindergarten through secondary school STEM and other high-demand degree initiatives; (iii) determining and refining best practices in STEM instruction and leveraging those best practices to promote STEM education in both the Commonwealth's institutions of higher education and its elementary and secondary schools; (iv) enhancing teacher education and professional development in STEM disciplines; (v) strengthening mathematics readiness in secondary schools through earlier diagnosis and remediation of deficiencies; (vi) providing financial incentives to increase STEM enrollment and degree production at the Commonwealth's institutions of higher education; (vii) providing assistance to public institutions of higher education and private institutions of higher education in the acquisition and improvement of STEM-related facilities and equipment; (viii) providing STEM incentives in early pathway programs at institutions of higher education and in the ~~comprehensive community college transfer grant program~~ *Two-Year College Transfer Grant Program*; (ix) assessing degree programs using such economic opportunity metrics as marketplace demand, earning potential, and employer satisfaction and other indicators of the historical and projected economic value and impact of degrees to provide useful information on degrees to students as they make career choices and to state policy makers and university decision makers as they decide how to allocate scarce resources; (x) aligning state higher education efforts with marketplace demands; and (xi) determining such other issues as the partnership deems relevant to increasing the number of students completing degrees in STEM and other high-demand fields at institutions of higher education.

**§ 23.1-634. Prompt crediting and expeditious refunding of funds.**

Each eligible institution acting as an agent for students receiving ~~awards~~ *grants* under the Program shall promptly credit disbursed funds to student accounts following the institution's verification of student eligibility and expeditiously distribute any refunds due recipients.

**§ 23.1-712. Payroll deductions.**

The Commonwealth, the agencies and localities of the Commonwealth and their subdivisions, and any employer in the Commonwealth ~~are authorized to~~ *may* agree, by contract or otherwise, to remit payments or contributions on behalf of an employee toward prepaid tuition contracts or savings trust accounts through payroll deductions.

**§ 23.1-1004. Management agreement; eligibility and application.**

A. The governing ~~board~~ and administration of each public ~~institutions~~ *institution* of higher education that meets the state goals set forth in subsection A of § 23.1-1002 and meets the requirements of this article to demonstrate the ability to manage successfully the administrative and financial operations of the institution without jeopardizing the financial integrity and stability of the institution may negotiate with the Governor to develop a management agreement with the Commonwealth to exercise restructured financial and administrative authority.

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

1. a. Its most current and unenhanced bond rating received from Moody's Investors Service, Inc., Standard & Poor's, Inc., or 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 management agreement is entered into; or

b. The institution has participated in decentralization pilot programs in the areas of finance and capital outlay, demonstrated management competency in those two areas as evidenced by a written certification from the Cabinet Secretary designated by the Governor, received restructured operational authority under a memorandum of understanding pursuant to Article 3 (§ 23.1-1003 et seq.) in at least one functional area, and demonstrated management competency in that area for a period of at least two years;

2. At least an absolute two-thirds of the institution's governing board has voted in the affirmative for a resolution in support of a request for restructured operational authority under a management agreement;

3. The institution submits to the Governor a written request for his approval of the management agreement that contains evidence that (i) the institution possesses the necessary administrative infrastructure, experience, and expertise to perform successfully its public educational mission as a covered institution; (ii) the institution is financially able to operate as a covered institution without jeopardizing the financial integrity and stability of the institution; (iii) the institution consistently meets the financial and administrative management standards pursuant to § 23.1-1001; and (iv) the institution's governing board has adopted performance and accountability standards, in addition to any institutional performance benchmarks included in the general appropriation act and developed pursuant to § 23.1-206, against which its implementation of the restructured operational authority under the management agreement can be measured;

4. The institution provides a copy of the written request 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;

5. The institution agrees to reimburse the Commonwealth for any additional costs that the Commonwealth incurs to provide health or other group insurance benefits to employees and undertake any risk management program that are attributable to the institution's exercise of restructured operational

authority. 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 affected programs;

6. The institution considers potential future impacts of tuition increases on the Virginia College Savings Plan and discusses such potential impacts with parties participating in the development of the management agreement. 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

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

**§ 23.1-1014. Covered institutions; operational authority; financial operations; financing and indebtedness.**

A. Each covered institution may:

1. Borrow money and issue bonds, notes, or other obligations as provided in this article and purchase such bonds, notes, or other obligations;

2. Seek financing from, incur, or assume indebtedness to, and enter into contractual commitments with, the Virginia Public Building Authority and the Virginia College Building Authority, which authorities ~~are authorized to~~ may borrow money and make and issue negotiable notes, bonds, notes, or other obligations to provide such financing relating to facilities or any project; and

3. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments with, the Commonwealth as otherwise provided by law relating to the institution's facilities or any project.

B. Notwithstanding the provisions of this chapter, no covered institution is exempt from any requirement or covenant contained in any outstanding bonds, notes, or other obligations.

**§ 23.1-1026. Covered institutions; operational authority; human resources; severance policies.**

A. Each covered institution shall adopt a severance policy for its eligible participating covered employees that is applicable to voluntary and involuntary separations, including reductions in workforce. The provisions of the Workforce Transition Act (§ 2.2-3200 et seq.) shall not apply to participating covered employees.

B. The terms and conditions of a covered institution's severance policy for eligible participating covered employees shall be determined by the institution's governing board. The covered institution and the Board of the Virginia Retirement System shall negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for participating covered employees who participate in the Virginia Retirement System.

C. Covered employees who (i) were employees of a covered institution and were covered by the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 prior to the effective date of the initial management agreement, (ii) would otherwise be eligible for severance benefits under the Workforce Transition Act (§ 2.2-3200 et seq.), and (iii) are separated by a covered institution because of a reduction in workforce have the same preferential hiring rights with state agencies and other executive branch institutions as other state employees have under § 2.2-3201. A covered institution shall recognize the hiring preference conferred by § 2.2-3201 on state employees who were (a) hired by a state agency or executive branch institution before the covered institution's effective date of the initial management agreement and (b) separated after that date by that state agency or executive branch institution because of a reduction in workforce. If a covered institution has adopted a classification system pursuant to § 23.1-1021 that differs from the classification system administered by the Department of Human Resource Management, the covered institution shall classify the separated employee according to its classification system and shall place the separated employee appropriately. Any such separated employee who is hired by a covered institution is a participating covered employee for purposes of this article. Classification decisions that are made pursuant to this subsection and apply to employees transferring between state agencies, between other executive branch institutions and covered institutions, and between covered institutions as a result of a reduction in ~~free~~ workforce and with the preferential hiring rights provided in this subsection and in § 2.2-3201 are presumed appropriate, and a separated employee who grieves the classification decision bears the burden of demonstrating that the classification violates the separated employee's preferential hiring rights.

D. An employee's transition from being an employee of a public institution of higher education to being a covered employee of a covered institution on the effective date of a covered institution's initial management agreement shall not, in and of itself, constitute a severance of that employee or a reduction in ~~free~~ workforce that would make either the covered institution's severance policy adopted pursuant to subsection A or the Workforce Transition Act (§ 2.2-3200 et seq.) applicable to that employee.

**§ 23.1-1211. Default on payments.**

A. Whenever it appears to the Governor from an affidavit filed with him by the paying agent for the bonds issued by the Authority that an eligible institution has defaulted on the payment of the principal of or premium, if any, or interest on its bonds pursuant to this article, the Governor shall immediately make a summary investigation into the facts set forth in the affidavit. If it is established to the satisfaction of the Governor that the eligible institution is in default in the payment of the principal of or premium, if any, or interest on its bonds, the Governor immediately shall make an order directing the State Comptroller to make payment immediately to the owners or paying agent of the bonds in default on behalf of the eligible institution from any appropriation available to the eligible institution in the amount due and remaining unpaid by the eligible institution on its bonds.

B. Any payment so made by the State Comptroller to the owners or paying agent of the bonds in default shall be credited as if made directly by the eligible institution and charged by the State Comptroller against the appropriations of the eligible institution. The owners or paying agent of the bonds in default at the time of payment shall deliver to the State Comptroller, in a form satisfactory to the State Comptroller, a receipt for payment of the principal, premium, or interest satisfied by the payment. The State Comptroller shall report each payment made to the governing ~~body~~ *board* of the defaulting eligible institution under the provisions of this section.

C. The Governor shall direct the State Comptroller to (i) charge against the appropriations available to any eligible institution that has defaulted on its bonds pursuant to this section all future payments of principal of and interest on the eligible institution's bonds when due and payable and (ii) make such payments to the owners or paying agent of the bonds on behalf of the eligible institution to ensure that no future default will occur on such bonds. The charge and payment shall be made upon receipt of documentation that the State Comptroller deems to be satisfactory evidence of the claim. The owners or paying agent of the bonds at the time of each payment shall deliver to the State Comptroller, in a form satisfactory to the State Comptroller, a receipt for payment of the principal or interest satisfied by the payment.

D. Nothing in this section shall be construed to create any obligation on the part of the State Comptroller or the Commonwealth to make any payment on behalf of the defaulting eligible institution other than from funds appropriated to the defaulting eligible institution.

**§ 23.1-1225. Powers; acquisition of property.**

The Authority may, directly or through a participating institution as its agent, acquire by (i) purchase solely from funds provided under the ~~authority~~ *provisions* of this article, (ii) gift, or (iii) devise, such lands, structures, property, real or personal, rights, rights-of-way, air rights, franchises, easements, and other interests in lands, including lands lying under water and riparian rights, that are located within the Commonwealth as it may deem necessary or convenient for the acquisition, construction, or operation of a project, upon such terms and at such prices as it deems reasonable and can be agreed upon between it and the owner of the property and take title to the property in the name of the Authority or any participating institution as its agent.

**§ 23.1-1300. Members of governing boards; removal; terms; nonvoting, advisory representatives.**

A. Members appointed by the Governor to the governing boards of public institutions of higher education shall serve for terms of four years. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. No member appointed by the Governor to such a governing board shall serve for more than two consecutive four-year terms; however, a member appointed by the Governor to serve an unexpired term is eligible to serve two consecutive four-year terms immediately succeeding such unexpired term. Except as otherwise provided in § 23.1-2601, all appointments are subject to confirmation by the General Assembly. Members appointed by the Governor to the governing board of a public institution of higher education shall continue to hold office until their successors have been appointed and ~~confirmed~~ *qualified*. Ex officio members shall serve a term coincident with their term of office.

B. No member appointed by the Governor to the governing board of a public institution of higher education who has served two consecutive four-year terms on such board is eligible to serve on the same board until at least four years have passed since the end of his second consecutive four-year term.

C. Notwithstanding the provisions of subsection E or any other provision of law, the Governor may remove from office for malfeasance, misfeasance, incompetence, or gross neglect of duty any member of the board of any public institution of higher education and fill the vacancy resulting from the removal.

D. The Governor shall set forth in a written public statement his reasons for removing any member pursuant to subsection C at the time the removal occurs. The Governor is the sole judge of the sufficiency of the cause for removal as set forth in subsection C.

E. If any member of the governing board of a public institution of higher education fails to attend (i) the meetings of the board for one year without sufficient cause, as determined by a majority vote of the board, or (ii) the educational programs required by § 23.1-1304 in his first two years of membership without sufficient cause, as determined by a majority vote of the board, the remaining members of the board shall record such failure in the minutes at its next meeting and notify the Governor, and the office

of such member shall be vacated. No member of the board of visitors of a ~~four-year~~ *baccalaureate* public institution of higher education or the State Board for Community Colleges who fails to attend the educational programs required by § 23.1-1304 during his first four-year term is eligible for reappointment to such board.

F. The governing board of each public institution of higher education shall adopt in its bylaws policies (i) for removing members pursuant to subsection E and (ii) referencing the Governor's power to remove members described in subsection C.

G. The governing board of each public institution of higher education and each local community college board may appoint one or more nonvoting, advisory faculty representatives to its respective board. In the case of local community college boards and boards of visitors, such representatives shall be chosen from individuals elected by the faculty or the institution's faculty senate or its equivalent. In the case of the State Board, such representatives shall be chosen from individuals elected by the Chancellor's Faculty Advisory Committee. Such representatives shall be appointed to serve (i) at least one term of at least 12 months, which shall be coterminous with the institution's fiscal year or (ii) for such terms as may be mutually agreed to by the State Board and the Chancellor's Faculty Advisory Committee, or by the local community college board or the board of visitors, and the institution's faculty senate or its equivalent.

H. The board of visitors of any baccalaureate public institution of higher education shall appoint one or more students as nonvoting, advisory representatives. Such representatives shall be appointed under such circumstances and serve for such terms as the board of visitors of the institution shall prescribe.

I. Nothing in subsections G and H shall prohibit the governing board of any public institution of higher education or any local community college board from excluding such nonvoting, advisory faculty or student representatives from discussions of faculty grievances, faculty or staff disciplinary matters or salaries, or any other matter.

### **§ 23.1-1303. Governing boards; duties.**

A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine, article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

B. The governing board of each public institution of higher education shall:

1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions that (i) establish the requirement of transparency, to the extent required by law, in all board actions; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record minutes of each open meeting and post the minutes on the board's website, in accordance with subsection I of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved in an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711; and (iii) require that the board invite the Attorney General's appointee or representative to all meetings of the board, executive committee, and board committees;

2. Establish regulations or institution policies for the acceptance and assistance of students that include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the federal requirement to register for the selective service are not eligible to receive any state direct student assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth shall not be considered in making admissions determinations for students who have earned a diploma pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of certain graduates of comprehensive community colleges as set forth in § 23.1-907;

3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

4. Notwithstanding any other provision of state law, establish policies and procedures requiring the notification of the parent of a dependent student when such student receives mental health treatment at the institution's student health or counseling center and such treatment becomes part of the student's educational record in accordance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such notification shall only be required if it is determined that there exists a substantial likelihood that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. However, notification may be withheld if any person licensed to diagnose and treat mental, emotional, or behavioral disorders by a health regulatory board within the Department of Health Professions who is treating the student has made a part of the student's record a written statement that, in the exercise of his professional judgment, the notification would be reasonably likely to cause substantial harm to the student or another person. No public institution of higher education or employee of a public institution of higher education making a disclosure pursuant to this subsection is civilly liable for any harm

resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct by the institution or its employees;

5. Establish policies and procedures requiring the release of the educational record of a dependent student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a parent at his request;

6. Establish programs to seek to ensure that all graduates have the technology skills necessary to compete in the twenty-first century and that all students matriculating in teacher-training programs receive instruction in the effective use of educational technology;

7. Establish policies for the discipline of students who participate in varsity intercollegiate athletics, including a provision requiring an annual report by the administration of the institution to the governing board regarding enforcement actions taken pursuant to such policies;

8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive officer's performance. Any change to the chief executive officer's employment contract during any such meeting or any other meeting of the board shall be made only by a vote of the majority of the board's members;

9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human research committee to submit to the Governor, the General Assembly, and the chief executive officer of the institution or his designee at least annually a report on the human research projects reviewed and approved by the committee and require the committee to report any significant deviations from approved proposals;

10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and the accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of such statements pursuant to § 30-133;

11. Submit to the General Assembly and the Governor an annual executive summary of its interim activity and work no later than the first day of each regular session of the General Assembly. The executive summary shall be submitted as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website;

12. Make available to any interested party upon request a copy of the portion of the most recent report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in Virginia" pertaining to institutions of higher education;

13. Adopt policies or institution regulations regarding the ownership, protection, assignment, and use of intellectual property and provide a copy of such policies *or institution regulations* to the Governor and the Joint Commission on Technology and Science. All employees, including student employees, of public institutions of higher education are bound by the intellectual property policies *or institution regulations* of the institution employing them; and

14. Adopt policies that are supportive of the intellectual property rights of matriculated students who are not employed by such institution.

**§ 23.1-1305. Governing boards; student accounts; collections.**

No governing board shall refer a student account to collections for nonpayment before *such referral* is required by the provisions of § 2.2-4806. This section shall not apply to public institutions of higher education that have entered into management agreements with the Commonwealth pursuant to the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.).

**§ 23.1-2308. The Medical College of Virginia, Health Sciences Schools of the University.**

The colleges, schools, and divisions previously existing as The Medical College of Virginia are designated the *Medical College of Virginia*, Health Sciences Schools of the University.

**§ 23.1-2404. Powers of the Authority.**

A. The Authority has all the powers necessary or convenient to carry out the purposes and provisions of this chapter, including the power to:

1. Sue and be sued in its own name;
2. Have and alter an official seal;
3. Have perpetual duration and succession in its name;
4. Locate and maintain offices at such places as it may designate;
5. Make and execute contracts, guarantees, or any other instruments and agreements necessary or convenient for the exercise of its powers and functions, including contracts with hospitals or health care businesses to operate and manage any or all of the hospital facilities or operations, and incur liabilities and secure the obligations of any entity or individual;
6. Conduct or engage in any lawful business, activity, effort, or project consistent with the Authority's purposes or necessary or convenient to exercise its powers;
7. Exercise, in addition to its other powers, all powers that are (i) granted to corporations by the

provisions of Title 13.1 or similar provisions of any successor law, except in those cases in which the power is confined to corporations created under such title, and (ii) not inconsistent with the purposes and intent of this chapter or the limitations included in this chapter;

8. Accept, hold, and enjoy any gift, devise, or bequest to the Authority or its predecessors to be held for the uses and purposes designated by the donor, if any, or if not so designated, for the general purposes of the Authority, whether given directly or indirectly, and accept, execute, and administer any trust or endowment fund in which it has or may have an interest under the terms of the instrument creating the trust or endowment fund;

9. Borrow money and issue bonds as provided in this chapter and purchase such bonds;

10. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments with the Virginia Public Building Authority and the Virginia College Building Authority, which authorities ~~are authorized to~~ may borrow money and make and issue negotiable notes, bonds, and other evidences of indebtedness to provide such financing relating to the hospital facilities or any project;

11. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments with the Commonwealth as otherwise provided by law relating to the hospital facilities or any project;

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

13. Develop policies and procedures generally applicable to the procurement of goods, services, and construction based upon competitive principles;

14. Except as to those hospital facilities or any part of such facilities that are leased to the Authority by the University, the control and disposition of which shall be determined by such lease instruments:

a. Own, hold, improve, use, and otherwise deal with real or personal property, tangible or intangible, or any right, easement, estate, or interest in such property, acquired by purchase, exchange, gift, assignment, transfer, foreclosure, lease, bequest, devise, operation of law, or other means on such terms and conditions and in such manner as it may deem proper;

b. Sell, assign, lease, encumber, mortgage, or otherwise dispose of any project, any other real or personal property, tangible or intangible, any right, easement, estate, or interest in such property, or any deed of trust or mortgage lien interest that it owns, that is under its control or custody or in its possession;

c. Release or relinquish any right, title, claim, lien, interest, easement, or demand however acquired, including any equity or right of redemption in property foreclosed by it; and

d. Take any action pursuant to subdivision 14 by public or private sale or with or without public bidding, notwithstanding the provisions of any other law;

15. Accept loans, grants, contributions, or other assistance from the federal government, the Commonwealth, any political subdivision of the Commonwealth, or any other public or private source to carry out any of the purposes of this chapter and enter into any agreement or contract regarding the acceptance, use, or repayment of any such loan, grant, contribution, or assistance in furtherance of the purposes of this chapter;

16. Exercise the power of eminent domain pursuant to the provisions of Chapter 2 (§ 25.1-200 et seq.) of Title 25.1 to acquire by condemnation any real property, including fixtures and improvements, that it may deem necessary to carry out the purposes of this chapter, upon (i) its adoption of a resolution declaring that the acquisition of such property is in the public interest and necessary for public use and (ii) the approval of the Governor. The Authority may acquire property already devoted to a public use, provided that no property belonging to any locality, religious corporation, unincorporated church, or charitable corporation may be acquired without its consent;

17. Fix, revise, charge, and collect rates, rentals, fees, and other charges for the services or facilities furnished by or on behalf of the Authority and establish policies, procedures, and regulations regarding any such service rendered or the use, occupancy or operation of any such facility. Such charges and policies, procedures, and regulations are not subject to supervision or regulation by any commission, board, bureau, or agency of the Commonwealth except as otherwise provided by law for the providers of health care;

18. Consistent with § 23.1-2407, create, assist in the creation of, own in whole or in part, control, participate in or with any public or private entity, purchase, receive, subscribe for, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise acquire or dispose of any (i) shares or obligations of, or other interests in, any entities organized for any purpose within or outside the Commonwealth and (ii) obligations of any person or corporation;

19. Participate in joint ventures with individuals, corporations, governmental bodies or agencies, partnerships, associations, insurers, or other entities to facilitate any activities or programs consistent with the public purposes and intent of this chapter;

20. Create a nonprofit entity for the purpose of soliciting, accepting, and administering grants, outright gifts and bequests, endowment gifts and bequests, and gifts and bequests in trust. Such entity

shall not engage in trust business or duplicate such activities by the University or its related foundations;

21. Provide appropriate assistance, including making loans and providing time of employees, to corporations, partnerships, associations, joint ventures, or other entities whether such entities are owned or controlled in whole or in part or directly or indirectly by the Authority;

22. Provide, promote, support, and sponsor education and scientific research in medicine, public health, and related fields and promote public knowledge in medicine, public health, and related fields;

23. Administer programs to assist in the delivery of medical and related services to the citizens of the Commonwealth and others;

24. Participate in and administer federal, state, and local programs affecting, supporting, or carrying out any of its purposes; and

25. Exercise independently the powers conferred by this chapter in furtherance of its corporate and public purposes.

B. The exercise of the powers permitted by this chapter shall be deemed the performance of essential governmental functions and matters of public necessity for the entire Commonwealth in the provision of health care, medical and health sciences education, and research for which public moneys may be borrowed, loaned, spent, or otherwise utilized and private property may be utilized or acquired.

#### **§ 23.1-2408. Moneys of the Authority.**

A. All moneys of the Authority derived from any source shall be paid to the treasurer of the Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or trust companies, in one or more special accounts. All banks and trust companies ~~are authorized to~~ *may* give security for such deposits, if required by the Authority. The moneys in such accounts shall be paid out on the warrant or other orders of the treasurer of the Authority or such other person as the Authority may authorize to execute such warrants or orders.

B. Notwithstanding any provision of law to the contrary, the Authority may invest its operating funds in any obligations or securities that are considered legal investments for public funds in accordance with the Investment of Public Funds Act (§ 2.2-4500 et seq.). The board shall adopt written investment guidelines and retain an independent investment advisory firm or consultant to review at least every five years the suitability of the Authority's investments and the consistency of such investments with the investment guidelines.

#### **§ 23.1-2409. Grants and loans from localities.**

Localities ~~are authorized to~~ *may* lend or donate money or other property to the Authority for any of the Authority's purposes. The local governing body making the grant or loan may restrict the use of such grants or loans to a specific project within or outside that locality.

#### **§ 23.1-2413. Capital projects.**

A. All capital projects of the Authority shall be approved by the board. Within 30 days after approval of any capital project in excess of \$5 million, the board shall notify the House Appropriations and Senate Finance Committees of the scope, cost, and construction schedule of the proposed capital project. The board may undertake the project unless either Committee raises objections within 30 days of the notification, in which case the Authority shall not undertake the project until such objections are resolved.

B. Before the Authority materially increases the size or materially changes the scope of any capital project for which construction has commenced, such project shall be approved again by the board in accordance with subsection A and, in the case of any capital project in excess of \$5 million, presented again to the House Appropriations and Senate Finance Committees in accordance with subsection A.

C. Notwithstanding any provision of law to the contrary, the Authority is not subject to any further process or procedure that requires the submission, review, or approval of any capital project; however, the Authority shall ensure that ~~BOCA Building Officials and Code Administrators (BOCA) Code or any successor code~~ and fire safety inspections are conducted for any capital project and that such projects are inspected by the State Fire Marshal or his designee prior to certification for building occupancy.

#### **§ 23.1-2415. Employees of the Authority.**

A. Employees of the Authority shall be employed on such terms and conditions as established by the Authority. The board shall develop and adopt policies and procedures that afford its employees grievance rights, ensure that employment decisions are based upon the merit and fitness of applicants, and prohibit discrimination on the basis of race, religion, color, sex, or national origin.

B. The Authority shall issue a written notice to all individuals whose employment is transferred to the Authority. The date upon which such written notice is issued is referred to in this section as the "Option Date." Each individual whose employment is transferred to the Authority may, by written request made within 180 days of the Option Date, elect not to become employed by the Authority. Any employee of MCV Hospitals who (i) elects not to become employed by the Authority; (ii) is not reemployed by any department, institution, board, commission, or agency of the Commonwealth; (iii) is not offered alternative employment by the Authority; (iv) is not offered a position with the Authority for which the employee is qualified; or (v) is offered a position by the Authority that requires relocation or a reduction in salary is eligible for the severance benefits conferred by the provisions of the Workforce Transition Act (§ 2.2-3200 et seq.). Any employee who accepts employment with the Authority has

voluntarily separated from state employment and is not eligible for the severance benefits conferred by the provisions of the Workforce Transition Act.

C. Without limiting its power generally with respect to employees, the Authority may employ any University employee utilized in the operation of the hospital facilities and assume obligations under any employment agreement for such employee, and the University may assign any such contract to the Authority.

D. The Authority and the University may enter into agreements providing for the purchase of services of University employees utilized in the operation of the hospital facilities by paying agreed-upon amounts to cover all or part of the salaries and other costs of such employees.

E. Notwithstanding any other provision of law to the contrary, any employee whose employment is transferred to the Authority as a result of this chapter and who is a member of any plan for providing health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 shall continue to be a member of such health insurance plan under the same terms and conditions of such plan.

F. Notwithstanding subsection A of § 2.2-2818, the costs of providing health insurance coverage to employees who elect to continue to be members of the state employees' health insurance plan shall be paid by the Authority.

G. Any employee of the Authority may elect to become a member of any health insurance plan established by the Authority. The Authority may (i) establish a health insurance plan for the benefit of its employees, residents, and interns and (ii) enter into an agreement with the Department of Human Resource Management providing for the coverage of its employees, interns, and residents under the state employees' health insurance plan, provided that such agreement requires the Authority to pay the costs of providing health insurance coverage under such plan.

H. Notwithstanding any other provision of law to the contrary, any employee whose employment is transferred to the Authority as a result of this chapter and who is a member of the Virginia Retirement System or another retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1 shall continue to be a member of the Virginia Retirement System or such other authorized retirement plan under the same terms and conditions of such plan. Any such employee and any employee employed by the Authority between July 1, 1997, and June 30, 1998, who elected to be covered by the Virginia Retirement System may elect, during an open enrollment period from April 1, 2001, through April 30, 2001, to become a member of the retirement ~~program~~ *plan* established by the Authority for the benefit of its employees pursuant to § 23.1-2416 by transferring assets equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. The Authority shall reimburse the Virginia Retirement System for the actual cost of actuarial services necessary to determine the present value of the accrued basic benefit of employees who elect to transfer to the Authority's retirement plan. The following rules shall apply to such transfers:

1. With respect to any transferred employee who elects to remain a member of the Virginia Retirement System or another authorized retirement plan, the Authority shall collect and pay all employee and employer contributions to the Virginia Retirement System or such other authorized retirement plan for retirement in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of Title 51.1 for such transferred employees.

2. Transferred employees who elect to become members of the retirement ~~program~~ *plan* established by the Authority for the benefit of its employees shall be given full credit for their creditable service as defined in § 51.1-124.3, vesting and benefit accrual under the retirement ~~program~~ *plan* established by the Authority. For any such employee, employment with the Authority shall be treated as employment with any nonparticipating employer for purposes of the Virginia Retirement System or other retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1.

3. For transferred employees who elect to become members of the retirement ~~program~~ *plan* established by the Authority, the Virginia Retirement System or other such authorized plan shall transfer to the retirement plan established by the Authority assets equal to the actuarially determined present value of the accrued basic benefit as of the transfer date. For the purposes of such calculation, the basic benefit is the benefit accrued under the Virginia Retirement System or another authorized retirement plan based on creditable service and average final compensation as defined in § 51.1-124.3 and determined as of the transfer date. The actuarial present value shall be determined on the same basis, using the same actuarial factors and assumptions used in determining the funding needs of the Virginia Retirement System or such other authorized retirement plan so that the transfer of assets to the retirement plan established by the Authority has no effect on the funded status and financial stability of the Virginia Retirement System or other such authorized retirement plan.

### **§ 23.1-2607. Purchase of electric power and energy.**

A. For purposes of this section:

"Other party" means any other entity, including any (i) municipality, public institution of higher education, or political subdivision, public authority, agency, or instrumentality of the Commonwealth, ~~or~~ *another* state, or the United States or (ii) partnership, limited liability company, nonprofit corporation, electric cooperative, or investor-owned utility, whether created, incorporated, or otherwise organized and existing under the laws of the Commonwealth ~~or~~ *another* state, or the United States.



"Project" means any (i) system or facilities for the generation, transmission, transformation, or supply of electrical power and energy by any means whatsoever, including fuel, fuel transportation, and fuel supply resources; (ii) electric generating unit situated at a particular site in the continental United States; (iii) interest in such system, facilities, or unit, whether an undivided interest as a tenant in common or otherwise; or (iv) right to the output, capacity, or services of such system, facilities, or unit.

B. The University may contract with any other party to buy power and energy to meet its present or future requirements. Any such contract may provide that (i) the source of such power and energy is limited to a specified project; (ii) replacement power and energy shall be provided; or (iii) the University shall be obligated to make payments required by the contract whether the project is completed, operable, or operating and notwithstanding the suspension, interruption, interference, reduction, or curtailment of the output of a project or the amount of power and energy contracted for; (iv) payments required by the contract (a) are not subject to any reduction, whether by offset or otherwise, (b) are not conditioned upon the performance or nonperformance of any other party, (c) shall be made solely from the revenues derived by the University from the ownership and operation of the electric system of the University, (d) may be secured by a pledge of and lien upon the electric system of the University, and (e) shall constitute an operating expense of the electric system of the University; (v) in the event of default by the University or any other party to the contract in the performance of its obligations for any project, the University or any other party to the contract for such project shall succeed to the rights and interests and assume the obligations of the defaulting party, either pro rata or as may be otherwise agreed upon in the contract; or (vi) no other party shall be obligated to provide power and energy in the event that (a) the project is inoperable, (b) the output of the project is subject to suspension, interference, reduction, or curtailment, or (c) a force majeure occurs.

C. Notwithstanding any other charter or provision of law to the contrary, no such contract, with respect to the sale or purchase of capacity, output, power, or energy from a project, shall exceed 50 years from the date that the project is estimated to be placed in normal continuous operation.

D. The execution and effectiveness of any such contract are not subject to any authorizations and approvals by the Commonwealth or any agency, commission, instrumentality, or political subdivision of the Commonwealth except as specifically required by law.

E. No obligation under any such contract shall constitute a legal or equitable pledge, charge, lien, or encumbrance upon any property of the University or upon any of its income, receipts, or revenues, except the revenues of its electric system, and the faith and credit of the University shall not be pledged for the payment of any obligation under any such contract.

F. The University shall fix, charge, and collect rents, rates, fees, and charges for electric power and energy and other services, facilities, and commodities sold, furnished, or supplied through its electric system sufficient to provide revenues adequate to meet its obligations under any such contract and to pay any and all other amounts payable from or constituting a charge and lien upon such revenues, including amounts sufficient to pay the principal of and interest on bonds of the University issued for purposes relating to its electric system. Any pledge made by the University pursuant to this subsection is governed by the laws of the Commonwealth.

#### **§ 23.1-2631. Executive director.**

A. The principal administrative officer of the Water Center shall be an executive director who shall be appointed by the president of the University, subject to the approval of the board. The executive director shall be under the supervision of the president of the University.

B. The executive director shall exercise all powers imposed upon him by law, carry out the specific duties imposed upon him by the president of the University, and develop appropriate policies and procedures, with the advice of the Virginia Water Resources Research Center Statewide Advisory Board, for (i) identifying priority research problems; (ii) collaborating with the General Assembly; federal, state, and local governmental agencies; and water user groups in the formulation of its research programs; (iii) selecting projects to be funded; and (iv) disseminating information and transferring technology designed to help resolve water and related land problems of the Commonwealth. ~~He~~ *The executive director* shall employ such personnel and secure such services as may be required to carry out the purposes of this article and expend appropriated funds and accept moneys for cost-sharing on projects funded with federal and private funds.

#### **§ 23.1-2702. Powers and duties.**

A. The board shall appoint all professors, teachers, and agents, *and* fix their salaries; and generally direct the affairs of the University.

B. The board may confer degrees.

#### **§ 23.1-2903. State Board; officers, meetings, and regulations.**

A. The State Board shall elect a chairman from its membership and may provide for the election of one of its members as vice-chairman.

B. The State Board shall meet at least four times annually and on the call of the chairman when in his opinion additional meetings are expedient or necessary.

C. Eight members of the State Board shall constitute a quorum for all purposes.

D. The main office of the State Board shall be in the Commonwealth.

E. The State Board is ~~authorized to~~ *may* adopt necessary regulations for carrying out the purposes of this chapter.

**§ 23.1-3131. Virginia Research Investment Fund.**

A. There is hereby created in the state treasury a special nonreverting revolving fund to be known as the Virginia Research Investment Fund. The Fund shall be established on the books of the Comptroller. All moneys appropriated by the General Assembly for the Fund, and from any other sources public or private, shall be paid into the state treasury and credited to the Fund. Interest and other income earned on the Fund shall be credited to the Fund. Any moneys remaining in the Fund, including interest and other income thereon, at the end of each fiscal year shall not revert to the general fund but shall remain in the Fund.

B. 1. Notwithstanding any other provision of law, the General Assembly may specifically designate that certain moneys appropriated to the Fund be invested, reinvested, and managed by the Board of the Virginia Retirement System as provided in § 51.1-124.38. The State Treasurer shall not be held liable for losses suffered by the Virginia Retirement System on investments made under the authority of this subsection.

2. No more than \$4 million of moneys so invested, net of any administrative fee assessed pursuant to subsection E of § 51.1-124.38, may be awarded through grants or loans in a fiscal year for any purpose permitted by this article. At the direction of the Committee, the State Comptroller may annually request a disbursement of \$4 million from the moneys invested by the Board of the Virginia Retirement System, to be held with other moneys in the Fund not subject to such investment. At the end of each fiscal year, if less than \$4 million of such annual allocation is awarded as grants or loans in a calendar year, the Comptroller shall return the remainder of the annual \$4 million allocation to the Board of the Virginia Retirement System for reinvestment pursuant to § 51.1-124.38.

3. Any loans awarded pursuant to this article shall be paid by the Comptroller from the \$4 million annual allocation set forth in subdivision 2. The recipient of a loan shall repay the loan pursuant to the terms set forth by the Committee. At the end of each fiscal year, the Comptroller shall return any repayments received from loan recipients to the Board of the Virginia Retirement System for reinvestment pursuant to § 51.1-124.38.

C. Moneys in the Fund shall be used solely for grants and loans to (i) promote research and development excellence in the Commonwealth; (ii) foster innovative and collaborative research, development, and commercialization efforts in the Commonwealth in projects and programs with a high potential for economic development and job creation opportunities; (iii) position the Commonwealth as a national leader in science-based and technology-based research, development, and commercialization; (iv) attract and effectively recruit and retain eminent researchers to enhance research superiority at public institutions of higher education; and (v) encourage cooperation and collaboration among higher education research institutions, and with the private sector, in areas and with activities that foster economic development and job creation in the Commonwealth. Areas of focus for awards shall be those areas identified in the Commonwealth Research and Technology Strategic Roadmap, and shall include ~~but not~~ *be limited to* the biosciences, personalized medicine, cybersecurity, data analytics, and other areas designated in the general appropriation act.

D. The disbursement of grants and loans from the Fund shall be made by the State Comptroller at the written request of the Committee.

**§ 23.1-3133. Award from Virginia Research Investment Fund.**

A. The Council, in consultation with the Committee, shall establish guidelines, procedures, and objective criteria for the application for and award of grants and loans from the Fund. Such guidelines, procedures, and criteria, and any updates thereto, shall be submitted to the House Committee on Appropriations and the Senate Committee on Finance. The criteria for the award of grants and loans shall consider other grants, awards, loans, or funds awarded to the proposed program or project by the Commonwealth and shall require an applicant to indicate other applications for state grants, awards, loans, or funds currently pending at the time of the application for an award from the Fund. The criteria shall consider the potential of the program or project for which a grant or loan is sought to (i) culminate in the commercialization of research; (ii) culminate in the formation or spin-off of viable bioscience, biotechnology, cybersecurity, genomics, or similar companies; (iii) promote the build-out of scientific areas of expertise in science and technology; (iv) promote applied research and development; (v) provide modern facilities or infrastructure for research and development; (vi) result in significant capital investment and job creation; or (vii) promote collaboration among the public institutions of higher education ~~in the Commonwealth~~. Such criteria shall also require that the program or project for which a grant or loan is sought be related to an area identified in the Commonwealth Research Technology Strategic Roadmap.

B. Grants and loans may be awarded to public institutions of higher education ~~in the Commonwealth~~ or collaborations between public institutions of higher education ~~in the Commonwealth~~ and private entities. Any award from the Fund shall require a match of funds at least equal to the amount of the award.

C. Applications for grants and loans from the Fund shall be received by the Council in accordance

with the procedures developed pursuant to subsection A. Upon confirmation that an application is complete, the Council shall forward the application to an entity with recognized science and technology expertise for a review and certification of the scientific merits of the proposal, including a scoring or prioritization of applicant programs and projects deemed viable by the reviewing entity. Such entities include, ~~but are not limited to,~~ the Virginia Biosciences Health Research Corporation, the Innovation and Entrepreneurship Investment Authority, the Virginia Academy of Science, Engineering and Medicine, or any other entity deemed appropriate by the Council, including a scientific advisory committee created by the Council for the sole purpose of reviewing one or more applications received pursuant to this article.

D. Any proposal receiving a favorable evaluation pursuant to subsection C shall be forwarded, along with the scoring or prioritization, to the Committee for further review and a decision whether to award the proposal a grant or loan from the Fund. The award of a grant or loan from the Fund shall be subject to any terms and conditions set forth by the Committee for the award. All decisions by the Committee shall be final and not subject to further review or appeal. The Governor may announce any award approved by the Committee.

**§ 23.1-3208. Regulations.**

A. The board or its executive committee may adopt regulations concerning the use and visitation of properties under the control of the Jamestown-Yorktown Foundation to protect and secure such properties and the public enjoyment of such properties.

B. Any person who knowingly violates a regulation of the Foundation may be requested by an agent or employee of the Foundation to leave the property and upon the failure of such person ~~so~~ to do *so* is guilty of trespass as provided in § 18.2-119.

**§ 23.1-3216. Virginia Museum of Fine Arts established.**

The Virginia Museum of Fine Arts (*the Museum*) is established as an educational institution in the Commonwealth and a public body and instrumentality for the dissemination of education.

**§ 23.1-3217. Board of trustees.**

A. The management and control of the Virginia Museum of Fine Arts (~~the Museum~~) and its building, contents, furnishings, grounds, and other properties is vested in a board of trustees (the board) composed of (i) the Governor, the Speaker of the House of Delegates, and the mayor of the City of Richmond, who shall serve ex officio, and (ii) at least 25 but not more than 35 nonlegislative citizen members. Nonlegislative citizen members shall be appointed by the Governor after consideration of a list of nominees from the Museum submitted at least 60 days before the expiration of the member's term for which the nominations are being made.

B. Nonlegislative citizen members shall be appointed for terms of five years. No nonlegislative citizen member is eligible to serve more than two consecutive five-year terms; however, a member appointed to serve an unexpired term is eligible to serve two consecutive five-year terms immediately succeeding such unexpired term.

C. Nine members shall constitute a quorum at any meeting and a majority vote of those members present shall control in all matters.

D. The board shall adopt bylaws governing its organization and procedure and may alter and amend the bylaws.

E. The board shall elect one of its members president of the Museum.

F. The board may provide for an executive committee composed of at least three members that may exercise the powers vested in it and perform the duties imposed upon it by the board.

**§ 25.1-100. Definitions.**

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

"Appraisal" means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion of defined value of an adequately described property as of a specific date, supported by the presentation and analysis of relevant market information.

"Body determining just compensation" means a panel of commissioners empaneled pursuant to § 25.1-227.2, jury selected pursuant to § 25.1-229, or the court if neither a panel of commissioners nor a jury is appointed or empaneled.

"Court" means the court having jurisdiction as provided in § 25.1-201.

"Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of the petition pursuant to § 25.1-205, whichever occurs first.

"Freeholder" means any person owning an interest in land in fee, including a person owning a condominium unit.

"Land" means real estate and all rights and appurtenances thereto, together with the structures and other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

"Locality" or "local government" means a county, city, or town, as the context may require.

"Lost access" means a material impairment of direct access to property, a portion of which has been taken or damaged as set out in subsection B of § 25.1-230.1. This definition of the term "lost access" shall not diminish any existing right or remedy, and shall not create any new right or remedy other than to allow the body determining just compensation to consider a change in access in awarding just compensation.

"Lost profits" means a loss of business profits, as defined in § 25.1-230.1, subject to adjustment using generally accepted accounting principles consistently applied, from a business or farm operation for a period not to exceed (i) three years from the date of valuation if less than the entire parcel of property is taken or (ii) one year from the date of valuation if the entire parcel of property is taken that is suffered as a result of a taking of the property on which the business or farm operation is located, provided (a) the business is owned by the owner of the property taken, or by a tenant whose leasehold interest grants the tenant exclusive possession of substantially all the property taken, or (b) the farm operation is operated by the owner of the property taken, or by a tenant using for a farm operation the property taken, to the extent that the loss is determined and proven pursuant to subsection C of § 25.1-230.1. This definition of the term "lost profits" shall not create any new right or remedy or diminish any existing right or remedy other than to allow the body determining just compensation to consider lost profits in awarding just compensation if a person asserts a right to lost profits in a claim for compensation.

"Owner" means any person who owns property, provided that the person's ownership of the property is of record in the land records of the clerk's office of the circuit court of the county or city where the property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust, any person with a security interest in the property, or any person with a judgment or lien against the property. This definition of the term "owner" shall not affect in any way the valuation of property.

"Person" means any individual; firm; cooperative; association; corporation; limited liability company; trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in bankruptcy or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise; club, society or other group or combination acting as a unit; the Commonwealth or any department, agency or instrumentality thereof; any city, county, town, or other political subdivision or any department, agency or instrumentality thereof; or any interstate body to which the Commonwealth is a party.

"Petitioner" or "condemnor" means any person who possesses the power to exercise the right of eminent domain and who seeks to exercise such power. The term "petitioner" or "condemnor" includes a state agency.

"Property" means land and personal property, and any right, title, interest, estate or claim in or to such property.

"State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii) public authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth or any department, agency or instrumentality thereof; (iii) person who has the authority to acquire property by eminent domain under state law; or (iv) two or more of the aforementioned that carry out projects that cause persons to be displaced.

"State institution" means any (i) ~~educational~~ institutional institution enumerated in § 23.1-1100 or (ii) state hospital or state training center operated by the Department of Behavioral Health and Developmental Services.

**2. That the provisions of this act shall be effective retroactively to October 1, 2016.**