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**HOUSE BILL NO. 887****AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on General Laws  
on February 4, 2016)

(Patron Prior to Substitute—Delegate Albo)

*A BILL to amend and reenact §§ 2.2-4306, 2.2-4307, 2.2-4308, 2.2-4343, and 23-38.88 of the Code of Virginia, to amend the Code of Virginia by adding a section numbered 2.2-4308.01, and to repeal the fourth and fifth enactments of Chapters 760 and 776 of the Acts of Assembly of 2015, relating to the Virginia Public Procurement Act; requirements for use of construction management contracts.*

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

**1. That §§ 2.2-4306, 2.2-4307, 2.2-4308, 2.2-4343, and 23-38.88 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 2.2-4308.01 as follows:**

**§ 2.2-4306. Design-build contracts for Commonwealth authorized.**

A. Notwithstanding any other provisions of law, the Commonwealth may enter into contracts on a fixed price design-build basis ~~or construction management basis~~ in accordance with the provisions of this section and § 2.2-1502. Procedures to implement this section and any changes to such procedures shall be adopted by the Secretary of Administration after a public hearing and reviewed by the House Committee on Appropriations and the Senate Committee on Finance.

B. Procurement of construction by the design-build method shall be a two-step competitive negotiation process. In the first step, offerors shall be requested to submit their qualifications. Based upon the information submitted and any other relevant information which the Commonwealth may obtain, no more than five offerors deemed most suitable for the project shall be selected by the Commonwealth and requested to submit proposals.

C. Design-build contracts may be used by the Commonwealth only for those types of construction projects designated in the procedures adopted by the Secretary of Administration to implement this section.

**§ 2.2-4307. Fixed-price or not-to-exceed-price design-build and construction management contracts for juvenile correctional facilities authorized.**

Notwithstanding the provisions of § 2.2-4306, but subject to § 2.2-4308.01 and the procedures adopted by the Secretary of Administration to implement the provisions of ~~that section~~ §§ 2.2-4306 and 2.2-4308.01, the Commonwealth may enter into contracts for juvenile correctional facilities on a fixed-price or not-to-exceed-price design-build basis or construction management basis, including related leases, lease/purchase contracts, agreements relating to the sale of securities to finance such facilities, and similar financing agreements.

**§ 2.2-4308. Design-build or construction management contracts for public bodies other than the Commonwealth; eligibility requirements; award of contract; records to be kept.**

A. While the competitive sealed bid process remains the preferred method of construction procurement for public bodies in the Commonwealth, any public body other than the Commonwealth may enter into a contract for construction on a fixed price or not-to-exceed price design-build or construction management basis, provided *that* the public body complies with the requirements of this section *and* § 2.2-4308.01 and has implemented procedures consistent with the procedures adopted by the Secretary of Administration for utilizing design-build or construction management contracts.

Prior to making a determination as to the use of design-build or construction management for a specific construction project, the public body shall have in its employ or under contract a licensed architect or engineer with professional competence appropriate to the project who shall advise the public body regarding the use of design-build or construction management for that project and who shall assist the public body with the preparation of the Request for Proposal and the evaluation of such proposals.

Prior to issuing a Request for Proposal for any design-build or construction management contract for a specific construction project, the public body shall:

1. Have adopted, by ordinance or resolution, written procedures governing the selection, evaluation and award of design-build and construction management contracts. Such procedures shall be consistent with those described in this chapter for the procurement of nonprofessional services through competitive negotiation. Such procedures shall also require Requests for Proposals to include and define the criteria of such construction project in areas such as site plans; floor plans; exterior elevations; basic building envelope materials; fire protection information plans; structural, mechanical (HVAC), and electrical systems; and special telecommunications; and may define such other requirements as the public body determines appropriate for that particular construction project. Such procedures for:

a. Design-build construction projects shall include a two-step competitive negotiation process

60 consistent with the standards established by the Division of Engineering and Buildings of the  
61 Department of General Services for state agencies.

62 b. Construction management projects shall include selection procedures and required construction  
63 management contract terms consistent with § 2.2-4308.01 and the procedures as adopted by the  
64 Secretary of Administration.

65 2. Have documented in writing that for a specific construction project (i) a design-build or  
66 construction management contract is more advantageous than a competitive sealed bid construction  
67 contract; (ii) there is a benefit to the public body by using a design-build or construction management  
68 contract; and (iii) competitive sealed bidding is not practical or fiscally advantageous.

69 B. The contract shall be awarded to the fully qualified offeror who submits an acceptable proposal  
70 determined to be the best value in response to the Request for Proposal.

71 **§ 2.2-4308.01. Requirements for use of construction management contracts.**

72 A. For the purposes of this section, "public body" shall include without limitation (i) public  
73 institutions of higher education that have executed a valid management agreement under the  
74 Restructured Higher Education Financial and Administrative Operations Act of 2005 (§ 23-38.88 et seq.)  
75 and (ii) any public body that has implemented the provisions of this chapter pursuant to subdivisions A  
76 9, 10, and 11 of § 2.2-4343.

77 B. While the competitive sealed bid process remains the preferred method of construction  
78 procurement for public bodies in the Commonwealth:

79 1. For projects with a total project cost expected to be \$35 million or more, any public body may  
80 use competitive negotiation to procure construction on a construction management basis, provided that:

81 a. The public body makes a determination in advance and sets forth in writing that competitive  
82 sealed bidding is neither practicable nor fiscally advantageous to the public, which writing shall  
83 document the basis for the determination. Such written determination shall be included in the request for  
84 qualifications;

85 b. The contract is entered into prior to the schematic phase of design;

86 c. Prior alternative procurement method experience, including previous construction management  
87 experience or previous Virginia Bureau of Capital Outlay Management contract work shall not be  
88 required as a prerequisite for award of a contract. However, in the selection of a contractor, the public  
89 body may consider the experience of each contractor on comparable projects; and

90 d. Price is the critical basis for award of the contract.

91 2. For projects with a total project cost expected to be less than \$35 million, any public body may  
92 use competitive negotiation to procure construction on a construction management basis, provided that:

93 a. The requirements of subdivisions B 1 a through d are met;

94 b. The project is (i) of substantial historical value or interest or (ii) significantly unique or extremely  
95 complex in nature; and

96 c. (1) In the case of a state public body, other than a public institution of higher education that has  
97 been designated as a Tier 3 pursuant to the Restructured Higher Education Financial and  
98 Administrative Operations Act of 2005 (§ 23-38.88 et seq.) as of January 1, 2016, prior to any  
99 solicitation for such project such public body notifies the Director of the Department of General  
100 Services (the Director) in writing of its intent to procure construction on a construction management  
101 basis and the Director makes a written finding that the state public body is in compliance with the  
102 requirements of this subsection. Any such finding shall be on a per project basis;

103 (2) In the case of a public institution of higher education that has been designated as a Tier 3  
104 pursuant to the Restructured Higher Education Financial and Administrative Operations Act of 2005  
105 (§ 23-38.88 et seq.) as of January 1, 2016, prior to any solicitation for such project such public body  
106 notifies its board of visitors in writing of its intent to procure construction on a construction  
107 management basis and the board of visitors makes a written finding that such public institution of  
108 higher education is in compliance with the requirements of this subsection. Any such finding shall be on  
109 a per project basis; or

110 (3) In the case of a local public body, prior to any solicitation for such project, the public body  
111 notifies its governing body in writing of its intent to procure construction on a construction management  
112 basis and the governing body makes a written finding that the local public body is in compliance with  
113 the requirements of this subsection. Any such finding shall be on a per project basis.

114 D. Combining multiple construction projects for the purpose of exceeding the \$35 million threshold  
115 is prohibited, unless the projects are contiguous or directly related to each other. However, a Tier 3  
116 public institution of higher education may waive this restriction if its board of visitors approves the  
117 waiver.

118 E. The public body shall make available to the public, after award, all prequalification score sheets,  
119 award score sheets, and selection information for each project covered by this section.

120 **§ 2.2-4343. Exemption from operation of chapter for certain transactions.**

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

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

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

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

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

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

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

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

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

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

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

This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of § 2.2-4300, remain in effect in such county, city or town. Such policies and standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the locality when project costs are reduced by such contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining such cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

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

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

12. Notwithstanding the exemptions set forth in subdivisions 9 through 11, the provisions of subsections C and D of § 2.2-4303, and §§ 2.2-4305, 2.2-4308, 2.2-4308.01, 2.2-4311, 2.2-4315, 2.2-4317, 2.2-4330, 2.2-4333 through 2.2-4338, 2.2-4343.1, and 2.2-4367 through 2.2-4377 shall apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500 in the Commonwealth.

The method for procurement of professional services through competitive negotiation set forth in §§ 2.2-4303.1 and 2.2-4303.2 shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to

183 exceed \$60,000 in the aggregate or for the sum of all phases of a contract or project. A school board  
184 that makes purchases through its public school foundation or purchases educational technology through  
185 its educational technology foundation, either as may be established pursuant to § 22.1-212.2:2 shall be  
186 exempt from the provisions of this chapter, except, relative to such purchases, the school board shall  
187 comply with the provisions of §§ 2.2-4311 and 2.2-4367 through 2.2-4377.

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

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

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

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

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

207 18. The University of Virginia Medical Center to the extent provided by subdivision B 3 of  
208 § 23-77.4.

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

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

215 21. [Expired].

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

224 **§ 23-38.88. Eligibility for restructured financial and administrative operational authority.**

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

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

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

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

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

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

6. To convey an easement pertaining to any property such institution owns or controls as provided in subsection C of § 2.2-1150;

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

8. For purposes of compliance with § 2.2-4310, to procure goods, services, and construction from a vendor that the institution has certified as a small, women-owned, and minority-owned business enterprise pursuant to the conditions and provisions provided in § 2.2-1609;

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

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

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

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

13. To utilize as methods of procurement a fixed price, design-build or construction management contract ~~notwithstanding~~ *in compliance with* the provisions of §§ 2.2-4306 and 2.2-4308.01; and

14. The restructured financial and operational authority set forth in Article 2 (§ 23-38.90) and Article 3 (§ 23-38.91 et seq.).

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

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

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

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

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

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

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

6. Consistent with its institutional mission, develop articulation, dual admissions, and guaranteed admissions agreements with all Virginia community colleges and offer dual enrollment programs in cooperation with high schools;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. The institution agrees to reimburse the Commonwealth for any additional costs to the Commonwealth in providing health or other group insurance benefits to employees, and in undertaking any risk management program, that are attributable to the institution's exercise of any restructured financial or operational authority set forth in Article 3 (§ 23-38.91 et seq.). The institution's agreement to reimburse the Commonwealth for such additional costs shall be expressly included in each management

agreement with the institution. The Secretary of Finance and the Secretary of Administration, in consultation with the Virginia Retirement System and the affected institutions, shall establish procedures for determining any amounts to be paid by each institution and a mechanism for transferring the appropriate amounts directly and solely to the programs whose costs have been affected.

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

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

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

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

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

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

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

429 included in the management agreement.

430 6. Following the execution of each management agreement with a public institution of higher  
431 education and submission of that management agreement to the Chairmen of the House Committee on  
432 Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate  
433 Committee on Education and Health pursuant to § 23-38.97, the Governor shall include a  
434 recommendation for approval of the management agreement in "The Budget Bill" submitted pursuant to  
435 subsection A of § 2.2-1509 or in his gubernatorial amendments submitted pursuant to subsection E of  
436 § 2.2-1509 due by the December 20 that immediately follows the date of submission of the management  
437 agreement to such Committees. Following the General Assembly's consideration of whether to approve  
438 or disapprove the management agreement as recommended, if the management agreement is approved as  
439 part of the general appropriation act, it shall become effective on the effective date of such general  
440 appropriation act. However, no management agreement shall be entered into by a public institution of  
441 higher education and the Secretary or Secretaries designated by the Governor after November 15 of a  
442 calendar year.

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

448 **2. That the fourth and fifth enactments of Chapters 760 and 776 of the Acts of Assembly of 2015**  
449 **are repealed.**

450 **3. That all state public bodies, including public institutions of higher education governed under**  
451 **Chapters 933 and 943 of the Acts of Assembly of 2006, Chapters 594 and 616 of the Acts of**  
452 **Assembly of 2008, and Chapters 675 and 685 of the Acts of Assembly of 2009 and such institutions**  
453 **operating on November 1 of each year, shall report, at a minimum, the following on completed**  
454 **capital projects beginning with those authorized for construction under Chapter 665 of the Acts of**  
455 **Assembly of 2015 to the Director of the Department of General Services: (i) the procurement**  
456 **method, (ii) the project budget, (iii) the actual project cost, (iv) the expedited timeline, (v) the**  
457 **actual time for completion, and (vi) any post-completion issues. The Department of General**  
458 **Services shall consolidate the data in each such report and submit the consolidated data no later**  
459 **than December 1 of each year to the Governor and the Chairmen of the House Committee on**  
460 **Appropriations and the Senate Committee on Finance.**

461 **4. That local public bodies shall submit to their respective governing body for review and approval**  
462 **requests to use construction procurement methods, including construction management and**  
463 **design-build, but excluding construction using competitive sealed bidding.**

464 **5. That the Auditor of Public Accounts, as part of his annual audit plan, shall determine whether**  
465 **public institutions of higher education governed under Chapters 933 and 943 of the Acts of**  
466 **Assembly of 2006, Chapters 594 and 616 of the Acts of Assembly of 2008, and Chapters 675 and**  
467 **685 of the Acts of Assembly of 2009, and those operating under a memorandum of understanding**  
468 **pursuant to § 23-38.90 of the Code of Virginia, have complied with their internal review process in**  
469 **the selection of procurement method for construction.**

470 **6. That all state public bodies, including public institutions of higher education governed under**  
471 **Chapters 933 and 943 of the Acts of Assembly of 2006, Chapters 594 and 616 of the Acts of**  
472 **Assembly of 2008, and Chapters 675 and 685 of the Acts of Assembly of 2009 and those operating**  
473 **under a memorandum of understanding pursuant to § 23-38.90 of the Code of Virginia, shall post**  
474 **on the Department of General Services' central electronic procurement website the approved**  
475 **projects and approved procurement methods for construction at least 30 days prior to soliciting**  
476 **for design services for such construction projects.**