

LD0856358

**HOUSE BILL NO. 993**

Offered January 25, 1994

*A BILL to amend and reenact §§ 2.1-1.5, 2.1-1.6, 2.1-41.2, 9-6.25.3, 11-35, and 58.1-322 of the Code of Virginia and to amend the Code of Virginia by adding in Title 23 a chapter numbered 4.9, consisting of sections numbered 23-38.75 through 23-38.88, relating to the establishment of the Virginia Higher Education Tuition Trust Fund.*

Patrons—Mims, Cantor, Abbitt, Albo, Almand, Armstrong, Barlow, Behm, Bennett, Bloxom, Brickley, Callahan, Christian, Clement, Cohen, Connally, Cooper, Copeland, Cox, Cranwell, Crittenden, Croshaw, Crouch, Cunningham, Darner, Davies, DeBoer, Deeds, Diamonstein, Dillard, Dudley, Fisher, Forbes, Giesen, Grayson, Hall, Hamilton, Hargrove, Harris, Heilig, Howell, Hull, Ingram, Jackson, Johnson, Jones, D.C., Jones, J.C., Katzen, Keating, Kidd, Kilgore, Marshall, Martin, May, Mayer, McClure, McDonnell, Melvin, Miller, Moore, Morgan, Moss, Nelms, Newman, O'Brien, Orrock, Parrish, Phillips, Plum, Puller, Purkey, Putney, Reid, Reynolds, Rhodes, Robinson, Rollison, Ruff, Scott, Sherwood, Shuler, Spruill, Stump, Tata, Thomas, Van Yahres, Wagner, Wardrup, Watkins, Way, Wilkins and Woodrum; Senators: Barry, Bell, Benedetti, Calhoun, Chichester, Colgan, Cross, Earley, Hawkins, Holland, C.A., Holland, E.M., Holland, R.J., Houck, Howell, Lambert, Marsh, Marye, Maxwell, Miller, K.G., Norment, Potts, Quayle, Reasor, Robb, Russell, Saslaw, Stolle, Stosch, Trumbo, Waddell and Woods

Referred to Committee on Education

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

**1. That §§ 2.1-1.5, 2.1-1.6, 2.1-41.2, 9-6.25.3, 11-35, and 58.1-322 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 23 a chapter numbered 4.9, consisting of sections numbered 23-38.75 through 23-38.88, as follows:**

§ 2.1-1.5. Entities not subject to standard nomenclature.

The following entities are not subject to the provisions of § 2.1-1.2 due to the unique characteristics or enabling legislation of the entities:

**Authorities.**

Richmond Eye and Ear Hospital Authority.  
Small Business Financing Authority.  
State Education Assistance Authority.  
Virginia Agriculture Development Authority.  
Virginia College Building Authority.  
Virginia Education Loan Authority.  
Virginia Housing Development Authority.  
Virginia Innovative Technology Authority.  
Virginia Port Authority.  
Virginia Public Building Authority.  
Virginia Public School Authority.  
Virginia Resources Authority.  
Virginia Student Assistance Authorities.

**Boards.**

Board of Commissioners, Virginia Agriculture Development Authority.  
Board of Commissioners, Virginia Port Authority.  
Board of Directors, Richmond Eye and Ear Hospital Authority.  
Board of Directors, Small Business Financing Authority.  
Board of Directors, Virginia Student Assistance Authorities.  
Board of Directors, Virginia Innovative Technology Authority.  
Board of Directors, Virginia Resources Authority.  
Board of Regents, Gunston Hall Plantation.  
Board of Regents, James Monroe Memorial Law Office and Library.  
Board of Trustees, Family and Children's Trust Fund.  
Board of Trustees, Frontier Culture Museum of Virginia.  
Board of Trustees, Jamestown-Yorktown Foundation.  
Board of Trustees, Miller School of Albemarle.  
Board of Trustees, Rural Virginia Development Foundation.  
Board of Trustees, The Science Museum of Virginia.

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- 60 Board of Trustees, Virginia Museum of Fine Arts.
- 61 Board of Trustees, Virginia Museum of Natural History.
- 62 Board of Trustees, Virginia Outdoor Foundation.
- 63 *Board of the Virginia Higher Education Tuition Trust Fund.*
- 64 Board of Visitors, Christopher Newport University.
- 65 Board of Visitors, The College of William and Mary in Virginia.
- 66 Board of Visitors, George Mason University.
- 67 Board of Visitors, Gunston Hall Plantation.
- 68 Board of Visitors, James Madison University.
- 69 Board of Visitors, Longwood College.
- 70 Board of Visitors, Mary Washington College.
- 71 Board of Visitors to Mount Vernon.
- 72 Board of Visitors, Norfolk State University.
- 73 Board of Visitors, Old Dominion University.
- 74 Board of Visitors, Radford University.
- 75 Board of Visitors, University of Virginia.
- 76 Board of Visitors, Virginia Commonwealth University.
- 77 Board of Visitors, Virginia Military Institute.
- 78 Board of Visitors, Virginia Polytechnic Institute and State University.
- 79 Board of Visitors, Virginia State University.
- 80 Governing Board, Virginia College Building Authority.
- 81 Governing Board, Virginia Public School Authority.
- 82 Library Board, Virginia State Library and Archives.
- 83 State Board for Community Colleges, Virginia Community College System.
- 84 Commissions.
- 85 Alexandria Historical Restoration and Preservation Commission.
- 86 Chesapeake Bay Bridge and Tunnel Commission.
- 87 Hampton Roads Sanitation District Commission.
- 88 Districts.
- 89 Chesapeake Bay Bridge and Tunnel District.
- 90 Hampton Roads Sanitation District.
- 91 Educational Institutions.
- 92 Christopher Newport University.
- 93 College of William and Mary in Virginia.
- 94 Frontier Culture Museum of Virginia.
- 95 George Mason University.
- 96 James Madison University.
- 97 Jamestown-Yorktown Foundation.
- 98 Longwood College.
- 99 Mary Washington College.
- 100 Miller School of Albemarle.
- 101 Norfolk State University.
- 102 Old Dominion University.
- 103 Radford University.
- 104 The Science Museum of Virginia.
- 105 University of Virginia.
- 106 Virginia Commonwealth University.
- 107 Virginia Community College System.
- 108 Virginia Military Institute.
- 109 Virginia Museum of Fine Arts.
- 110 Virginia Polytechnic Institute and State University.
- 111 Virginia State Library and Archives.
- 112 Virginia State University.
- 113 Foundations.
- 114 Chippokes Plantation Farm Foundation.
- 115 Rural Virginia Development Foundation.
- 116 Virginia Conservation and Recreation Foundation.
- 117 Virginia Historic Preservation Foundation.
- 118 Virginia Outdoor Foundation.
- 119 Museum.
- 120 Virginia Museum of Natural History.
- 121 Plantation.

122 Gunston Hall Plantation.  
 123 System.  
 124 Virginia Retirement System.  
 125 § 2.1-1.6. State boards.  
 126 A. There shall be, in addition to such others as may be established by law, the following permanent  
 127 collegial bodies affiliated with a state agency within the executive branch:  
 128 Accountancy, Board for  
 129 Aging, Advisory Board on the  
 130 Agriculture and Consumer Services, Board of  
 131 Air Pollution, State Advisory Board on  
 132 Alcoholic Beverage Control Board, Virginia  
 133 Apple Board, Virginia State  
 134 Appomattox State Scenic River Advisory Board  
 135 Aquaculture Advisory Board  
 136 Architects, Professional Engineers, Land Surveyors and Landscape Architects, State Board for  
 137 Art and Architectural Review Board  
 138 Athletic Board, Virginia  
 139 Auctioneers Board  
 140 Audiology and Speech-Language Pathology, Board of  
 141 Aviation Board, Virginia  
 142 Barbers, Board for  
 143 Branch Pilots, Board for  
 144 Bright Flue-Cured Tobacco Board, Virginia  
 145 Building Code Technical Review Board, State  
 146 Catoctin Creek State Scenic River Advisory Board  
 147 Cattle Industry Board, Virginia  
 148 Cave Board  
 149 Certified Seed Board, State  
 150 Chesapeake Bay Local Assistance Board  
 151 Chickahominy State Scenic River Advisory Board  
 152 Child Abuse and Neglect, Advisory Board on  
 153 Chippokes Plantation Farm Foundation, Board of Trustees  
 154 Clinch Scenic River Advisory Board  
 155 Coal Research and Development Advisory Board, Virginia  
 156 Coal Surface Mining Reclamation Fund Advisory Board  
 157 Conservation and Development of Public Beaches, Board on  
 158 Conservation and Recreation, Board of  
 159 Contractors, Board for  
 160 Corn Board, Virginia  
 161 Correctional Education, Board of  
 162 Corrections, State Board of  
 163 Cosmetology, Board for  
 164 Criminal Justice Services Board  
 165 Dark-Fired Tobacco Board, Virginia  
 166 Deaf and Hard-of-Hearing, Advisory Board for the Department for the  
 167 Dentistry, Board of  
 168 Education, State Board of  
 169 Egg Board, Virginia  
 170 Emergency Medical Services Advisory Board  
 171 Employment Agency Advisory Board  
 172 Farmers Market Board, Virginia  
 173 Film Office Advisory Board  
 174 Fire Services Board, Virginia  
 175 Forensic Science Advisory Board  
 176 Forestry, Board of  
 177 Funeral Directors and Embalmers, Board of  
 178 Game and Inland Fisheries, Board of  
 179 Geology, Board for  
 180 Goose Creek Scenic River Advisory Board  
 181 Health Planning Board, Virginia  
 182 Health Professions, Board of

183	Health, State Board of
184	Hearing Aid Specialists, Board for
185	Hemophilia Advisory Board
186	Historic Resources, Board of
187	Housing and Community Development, Board of
188	Industrial Development Services Advisory Board
189	Insurance Advisory Board, State
190	Irish Potato Board, Virginia
191	Laboratory Services Advisory Board
192	Marine Products Board, Virginia
193	Medical Advisory Board, Department of Motor Vehicles
194	Medical Board of the Virginia Retirement System
195	Medicare and Medicaid, Advisory Board on
196	Medicine, Board of
197	Mental Health, Mental Retardation and Substance Abuse Services Board, State
198	Migrant and Seasonal Farmworkers Board
199	Military Affairs, Board of
200	Mines, Minerals and Energy, Board of Examiners in the Department of
201	Minority Business Enterprise, Interdepartmental Board of the Department of
202	Motor Vehicle Dealers' Advisory Board
203	Networking Users Advisory Board, State
204	Nottoway State Scenic River Advisory Board
205	Nursing, Board of
206	Nursing Home Administrators, Board of
207	Occupational Therapy, Advisory Board on
208	Oil and Gas Conservation Board, Virginia
209	Opticians, Board for
210	Optometry, Board of
211	Peanut Board, Virginia
212	Personnel Advisory Board
213	Pesticide Control Board
214	Pharmacy, Board of
215	(Delayed effective date - See Editor's note) Physical Fitness and Sports, Virginia Board on
216	Physical Therapy to the Board of Medicine, Advisory Board on
217	Plant Pollination Advisory Board
218	Polygraph Examiners Advisory Board
219	Pork Industry Board, Virginia
220	Poultry Products Board, Virginia
221	Private College Advisory Board
222	Private Security Services Advisory Board
223	Professional and Occupational Regulation, Board for
224	Professional Counselors, Board of
225	Professional Soil Scientists, Board for
226	Psychiatric Advisory Board
227	Psychology, Board of
228	Public Buildings Board, Virginia
229	Public Telecommunications Board, Virginia
230	Radiation Advisory Board
231	Real Estate Appraiser Board
232	Real Estate Board
233	Reciprocity Board, Department of Motor Vehicles
234	Recreational Fishing Advisory Board, Virginia
235	Recreation Specialists, Board of
236	Reforestation Board
237	Rehabilitative Services, Board of
238	Respiratory Therapy, Advisory Board on
239	Retirement System Review Board
240	Rockfish State Scenic River Advisory Board
241	Safety and Health Codes Board
242	Seed Potato Board
243	Sewage Handling and Disposal Appeal Review Board, State Health Department
244	Shenandoah State Scenic River Advisory Board

245 Small Business Advisory Board  
 246 Small Business Environmental Compliance Advisory Board  
 247 Small Grains Board, Virginia  
 248 Social Services, Board of  
 249 Social Work, Board of  
 250 Soil and Water Conservation Board, Virginia  
 251 Soybean Board, Virginia  
 252 State Air Pollution Control Board  
 253 Substance Abuse Certification Board  
 254 Surface Mining Review, Board of  
 255 Sweet Potato Board, Virginia  
 256 Teacher Education and Licensure, Advisory Board on  
 257 Tourism and Travel Services Advisory Board  
 258 Toxic Substances Advisory Board  
 259 Transportation Board, Commonwealth  
 260 Transportation Safety, Board of  
 261 Treasury Board, The, Department of the Treasury  
 262 Veterans' Affairs, Board on  
 263 Veterinary Medicine, Board of  
 264 Virginia Board for Asbestos Licensing  
 265 Virginia Employment Commission, State Advisory Board for the  
 266 *Virginia Higher Education Tuition Trust Fund, Board of the*  
 267 (Delayed effective date - See Editor's note) Virginia Horse Industry Board  
 268 Virginia Manufactured Housing Board  
 269 Virginia Mine Safety Board  
 270 Virginia Retirement System, Board of Trustees  
 271 Virginia Waste Management Board  
 272 Visually Handicapped, Virginia Board for the  
 273 Voluntary Formulary Board, Virginia  
 274 War Memorial Foundation, Virginia, Board of Trustees  
 275 Waste Management Facility Operators, Board for  
 276 Water Resources Research Center Statewide Advisory Board, Virginia  
 277 Waterworks and Wastewater Works Operators, Board for  
 278 Well Review Board, Virginia  
 279 Youth and Family Services, State Board of.  
 280 B. Notwithstanding the definition for "board" as provided in § 2.1-1.2, the following entities shall be  
 281 referred to as boards:  
 282 Compensation Board  
 283 State Board of Elections  
 284 State Water Control Board  
 285 Virginia Parole Board  
 286 Virginia Veterans Care Center Board of Trustees.  
 287 § 2.1-41.2. Appointment of agency heads; chief of staff.  
 288 Notwithstanding any provision of law to the contrary, the Governor shall appoint the administrative  
 289 head of each agency of the executive branch of state government except the following: the Executive  
 290 Director of the Virginia Port Authority, the Director of the State Council of Higher Education for  
 291 Virginia, the Executive Director of the Department of Game and Inland Fisheries, the Executive Director  
 292 of the Jamestown-Yorktown Foundation ~~and~~, the Director of the Virginia Retirement System, *and the*  
 293 *Executive Director of the Virginia Higher Education Tuition Trust Fund.* However, the manner of  
 294 selection of those heads of agencies chosen by election as of January 1, 1976, or as set forth in the  
 295 Constitution of Virginia shall continue without change. Each administrative head and Secretary  
 296 appointed by the Governor pursuant to this section shall be subject to confirmation by the General  
 297 Assembly, shall have such professional qualifications as may be prescribed by law, and shall serve at  
 298 the pleasure of the Governor. The chief of staff who may be appointed by the Governor pursuant to  
 299 § 2.1-38 shall be confirmed by a majority of the members of each house of the General Assembly. For  
 300 the purpose of this section, "agency" shall include all administrative units established by law or by  
 301 executive order which are not arms of the legislative or judicial branches of government, which are not  
 302 educational institutions as classified under §§ 9-84, 22.1-346, 23-14, and 23-252, which are not regional  
 303 planning districts, regional transportation authorities or districts, or regional sanitation districts and which  
 304 are not assigned by law to other departments or agencies, not including assignments to secretaries under  
 305 Chapter 5.1 (§ 2.1-51.7 et seq.) of this title.

- 306 § 9-6.25:3. Supervisory boards.  
307 There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the  
308 following supervisory boards:  
309 Alcoholic Beverage Control Board  
310 Board for Branch Pilots  
311 Board of Commissioners, Virginia Port Authority  
312 Board of Game and Inland Fisheries  
313 Board of Regents, Gunston Hall Plantation  
314 Board of Regents, James Monroe Memorial Law Office and Library  
315 Board of Trustees, Chippokes Plantation Farm Foundation  
316 Board of Trustees, Frontier Culture Museum of Virginia  
317 Board of Trustees, Jamestown-Yorktown Foundation  
318 Board of Trustees, the Science Museum of Virginia  
319 Board of Trustees, Virginia Museum of Fine Arts  
320 Board of Trustees, Virginia Retirement System  
321 Board of Trustees, Virginia Veterans Care Center  
322 Board of Trustees, Virginia War Memorial Foundation  
323 *Board of the Virginia Higher Education Tuition Trust Fund*  
324 Board of Visitors, Christopher Newport University  
325 Board of Visitors, George Mason University  
326 Board of Visitors, James Madison University  
327 Board of Visitors, Longwood College  
328 Board of Visitors, Mary Washington College  
329 Board of Visitors, Norfolk State University  
330 Board of Visitors, Old Dominion University  
331 Board of Visitors, Radford University  
332 Board of Visitors, The College of William and Mary in Virginia  
333 Board of Visitors, University of Virginia  
334 Board of Visitors, Virginia Commonwealth University  
335 Board of Visitors, Virginia Military Institute  
336 Board of Visitors, Virginia Polytechnic Institute and State University  
337 Board of Visitors, Virginia State University  
338 Commonwealth's Attorneys' Services Council  
339 Compensation Board  
340 Governing Board, Virginia College Building Authority  
341 Governing Board, Virginia Public School Authority  
342 State Board for Community Colleges, Virginia Community College System  
343 State Board of Education  
344 State Certified Seed Board  
345 State Council of Higher Education for Virginia  
346 Virginia Agricultural Council  
347 Virginia Bright Flue-Cured Tobacco Board  
348 Virginia Board for People with Disabilities  
349 Virginia Cattle Industry Board  
350 Virginia Corn Board  
351 Virginia Dark-Fired Tobacco Board  
352 Virginia Egg Board  
353 Virginia Horse Industry Board  
354 Virginia Marine Products Board  
355 Virginia Peanut Board  
356 Virginia Pork Industry Board  
357 Virginia Soybean Board  
358 Virginia State Apple Board  
359 Virginia Sweet Potato Board.  
360 § 11-35. Title; purpose; applicability.  
361 A. This chapter may be cited as the Virginia Public Procurement Act.  
362 B. The purpose of this chapter is to enunciate the public policies pertaining to governmental  
363 procurement from nongovernmental sources.  
364 C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of  
365 §§ 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80, to any town with a  
366 population of less than 3,500 as determined by the last official United States census.  
367 D. Except to the extent adopted by such governing body, the provisions of this chapter also shall not

apply, except as stipulated in subsection E, to any county, city or town whose governing body adopts by ordinance or resolution alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such governing body and the agencies thereof. This exemption shall be applicable only so long as such policies and procedures, or other policies and procedures meeting the requirements of this section, remain in effect in such county, city or town.

Except to the extent adopted by such school board, the provisions of this chapter shall not apply, except as stipulated in subsection E, to any school division whose school board adopts by policy or regulation alternative policies and procedures which are based on competitive principles and which are generally applicable to procurement of goods and services by such school board. This exemption shall be applicable only so long as such policies and procedures, or other policies or procedures meeting the requirements of this section, 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.

E. Notwithstanding the exemptions set forth in subsection D, the provisions of §§ 11-41 C, 11-41.1, 11-49, 11-51, 11-54, 11-56 through 11-61 and 11-72 through 11-80 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 set forth in subdivision 3 a of § 11-37 in the definition of competitive negotiation shall also apply to all counties, cities and school divisions, and to all towns having a population greater than 3,500, where the cost of the professional service is expected to exceed \$20,000.

F. The provisions of this chapter shall not apply to those contracts entered into prior to January 1, 1983, which shall continue to be governed by the laws in effect at the time those contracts were executed.

G. To the end that public bodies in the Commonwealth obtain high quality goods and services at reasonable cost, that all procurement procedures be conducted in a fair and impartial manner with avoidance of any impropriety or appearance of impropriety, that all qualified vendors have access to public business and that no offeror be arbitrarily or capriciously excluded, it is the intent of the General Assembly that competition be sought to the maximum feasible degree, that individual public bodies enjoy broad flexibility in fashioning details of such competition, that the rules governing contract awards be made clear in advance of the competition, that specifications reflect the procurement needs of the purchasing body rather than being drawn to favor a particular vendor, and that purchaser and vendor freely exchange information concerning what is sought to be procured and what is offered.

H. Notwithstanding the foregoing provisions of this section, the selection of services by the Virginia Retirement System *and the Board of the Virginia Higher Education Tuition Trust Fund* related to the management, purchase or sale of authorized investments, including but not limited to actuarial services, shall be governed by the standards set forth in ~~§ 51-1-116~~ *§ 51.1-116 and 23-38.80, respectively*, and shall not be subject to the provisions of this chapter.

I. The provisions of this chapter shall apply to procurement of any construction or planning and design services for construction by a Virginia not-for-profit corporation or organization not otherwise specifically exempted when the planning, design or construction is funded by state appropriations greater than \$10,000 unless the Virginia not-for-profit corporation or organization is obligated to conform to procurement procedures which are established by federal statutes or regulations, whether or not those federal procedures are in conformance with the provisions of this chapter.

#### CHAPTER 4.9.

#### VIRGINIA HIGHER EDUCATION TUITION TRUST FUND.

##### § 23-38.75. Definitions.

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

*"Board" means the Board of the Virginia Higher Education Tuition Trust Fund.*

*"Fund" means the Virginia Higher Education Tuition Trust Fund.*

*"Prepaid tuition contract" means the contract entered into by the Board and a purchaser pursuant to this chapter for the advance payment of undergraduate tuition at a fixed, guaranteed level by the purchaser for a qualified beneficiary to attend any two- or four-year public institution of higher education in the Commonwealth to which the qualified beneficiary is admitted.*

*"Purchaser" means a person who makes or is obligated to make advance payments in accordance with a prepaid tuition contract.*

*"Qualified beneficiary" or "beneficiary" means a resident of the Commonwealth, determined by the Board, who may apply advance tuition payments to undergraduate tuition as set forth in this chapter.*

*"Tuition" means the quarter, semester, or term charges imposed by any two- or four-year public institution of higher education in the Commonwealth and all mandatory fees required as a condition of enrollment of all students.*

*§ 23-38.76. Virginia Higher Education Tuition Trust Fund established; governing board; terms.*

429 A. To enhance the accessibility and affordability of higher education for all citizens of the  
430 Commonwealth, there is hereby established in the state treasury a special nonreverting fund known as  
431 the Virginia Higher Education Tuition Trust Fund. The Fund shall consist of payments received  
432 pursuant to prepaid tuition contracts made pursuant to this chapter, bequests, endowments or grants  
433 from the United States government, its agencies and instrumentalities, and any other available sources  
434 of funds, public or private. Any moneys remaining in the Fund at the end of a biennium shall not revert  
435 to the general fund but shall remain in the Fund. Interest and income earned from the investment of  
436 such funds shall remain in the Fund and be credited to it.

437 B. The Fund shall be administered by an eight-member Board, as follows: the Director of the State  
438 Council of Higher Education for Virginia or his designee; the Chancellor of the Virginia Community  
439 College System or his designee; the State Treasurer or his designee; the State Comptroller or his  
440 designee; and four citizens, to be appointed by the Governor, with significant experience in finance,  
441 accounting, and investment management. No person holding a full-time position of employment with the  
442 Commonwealth, any county or municipality, any institution of higher education, or any agency,  
443 instrumentality, or subdivision of the foregoing shall be eligible for appointment to the Board.

444 Of the citizen members to be appointed in 1992, two shall be appointed for four-year terms, and two  
445 shall be appointed for two- and three-year terms, respectively. Thereafter, all appointments shall be for  
446 terms of four years, except that appointments to fill vacancies shall be for the unexpired terms. No  
447 person shall be appointed to serve for or during more than two successive four-year terms, but after the  
448 expiration of a term of three years or less, or after the expiration of the remainder of a term to which  
449 appointed to fill a vacancy, two additional terms may be served by such member if appointed thereto.  
450 Should a noncitizen member cease to hold his public office, the vacancy shall be filled for the remainder  
451 of the term by his successor.

452 C. Members of the Board shall receive no compensation, but shall be reimbursed for actual expenses  
453 incurred in the performance of their duties. The Board shall elect from its membership a chairman, vice  
454 chairman, and a treasurer for each calendar year. A majority of the members of the Board shall  
455 constitute a quorum.

456 § 23-38.77. Powers and duties of Board.

457 The Board shall administer the Fund established by this chapter and shall develop and implement a  
458 program for the prepayment of undergraduate tuition at a fixed, guaranteed level for application at a  
459 two- or four-year public institution of higher education in the Commonwealth. In addition, the Board  
460 shall have the power and duty to:

461 1. Invest moneys in the Fund in any instruments, obligations, securities, or property deemed  
462 appropriate by the Board;

463 2. Develop requirements, procedures, and guidelines regarding prepaid tuition contracts, including,  
464 but not limited to, residency requirements; the number of participants in the Fund; the termination,  
465 withdrawal, or transfer of payments under a prepaid tuition contract; time limitations for the use of  
466 tuition benefits; and payment schedules;

467 3. Enter into contractual agreements, including contracts for legal, actuarial, financial, and  
468 consulting services;

469 4. Procure insurance against any loss in connection with the Fund's property, assets, or activities  
470 and indemnifying Board members from personal loss or accountability from liability arising from any  
471 action or inaction as a Board member;

472 5. Make arrangements with two- and four-year public institutions in the Commonwealth to fulfill  
473 obligations under prepaid tuition contracts, including, but not limited to, payment from the Fund of the  
474 then actual in-state undergraduate tuition cost on behalf of a qualified beneficiary to the institution in  
475 which the beneficiary is admitted and enrolled;

476 6. Apply for, accept, and expend gifts, grants, or donations from public or private sources to enable  
477 it to carry out its objectives; and

478 7. Promulgate regulations and procedures and to perform any act or function consistent with the  
479 purposes of this chapter.

480 § 23-38.78. Board actions not a debt of Commonwealth.

481 No act or undertaking of the Board shall be deemed to constitute a debt of the Commonwealth or  
482 any political subdivision thereof, or a pledge of the full faith and credit of the Commonwealth or of any  
483 political subdivision, but shall be payable solely from the Fund.

484 § 23-38.79. Executive director; staff support.

485 The Board shall employ an executive director, who shall be authorized to employ such staff as  
486 necessary to enable the Board to perform its duties as set forth in this chapter, and an actuary to serve  
487 as its technical advisor. The Board is authorized to determine the duties and to fix the salaries and  
488 compensation of such staff from such funds as may be appropriated or received.

489 § 23-38.80. Standard of care; investment and administration of Fund.

490 A. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the



benefit of the Fund, the Board shall act as trustee and shall exercise the judgment of care under the circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not in regard to speculation but to the permanent disposition of funds, considering the probable income as well as the probable safety of their capital. If the annual accounting and audit required by § 23-38.85 reveal that there are insufficient funds to ensure the actuarial soundness of the Fund, the Board shall be authorized to adjust the terms of subsequent prepaid tuition contracts or arrange refunds for current purchasers to ensure actuarial soundness.

B. The assets of the Fund shall be preserved, invested, and expended solely pursuant to and for the purposes of this chapter and shall not be loaned or otherwise transferred or used by the Commonwealth for any other purpose. Within the standard prescribed in subsection A of this section, the Board is authorized to acquire and retain every kind of property and every kind of investment, specifically including but not limited to (i) debentures and other corporate obligations of foreign or domestic corporations; (ii) common or preferred stocks traded on foreign or domestic stock exchanges, limited to sixty percent of total trust fund investments based on cost; (iii) not less than all of the stock of a corporation organized by the Board under the laws of the Commonwealth for the purposes of acquiring and retaining real property that the Board is authorized under this chapter to acquire and retain; and (iv) securities of any open-end or closed-end management type investment company or investment trust registered under the federal Investment Company Act of 1940, as amended, which persons of prudence, discretion, and intelligence acquire or retain for their own account. Within the limitations of the foregoing standard, the Board may retain property properly acquired, without time limitation and without regard to its suitability for original purchase. This section shall not be construed to prohibit the investment of the Fund, by purchase or otherwise, in bonds, notes, or other obligations of the Commonwealth or its agencies and instrumentalities.

C. The selection of services related to the management, purchase, or sale of authorized investments, including but not limited to actuarial services, shall be governed by the foregoing standard and shall not be subject to the provisions of the Virginia Public Procurement Act (§ 11-35 et seq.).

§ 23-38.81. Prepaid tuition contracts; terms; termination; etc.

A. Each prepaid tuition contract made pursuant to this chapter shall include the following terms and provisions:

1. The amount of payment or payments and the number of payments required from a purchaser on behalf of a qualified beneficiary;
2. The terms and conditions under which purchasers shall remit payments, including the dates of such payments;
3. Provisions for late payment charges, defaults, withdrawals, refunds, and any penalties;
4. The name and date of birth of the qualified beneficiary on whose behalf the contract is made;
5. Terms and conditions for a substitution for the qualified beneficiary originally named;
6. Terms and conditions for termination of the contract, including any refunds and the name of the person or persons entitled to terminate the contract;
7. The time period during which the qualified beneficiary must claim benefits from the Fund;
8. The number of credit hours or quarters, semesters, or terms contracted for by the purchaser;
9. Provisions for the application of tuition prepayments at nonpublic or out-of-state institutions of higher education;
10. All other rights and obligations of the purchaser and the trust; and
11. Any other terms and conditions which the Board deems necessary or appropriate.

B. All prepaid tuition contracts shall specifically provide that, if after a specified period of time the contract has not been terminated nor the qualified beneficiary's rights exercised, the Board, after making reasonable effort to contact the purchaser and the qualified beneficiary or their agents, shall retain the amounts otherwise payable under the contract and the rights of the purchaser and the qualified beneficiary shall be terminated.

§ 23-38.82. Federal taxation and securities rulings required.

No prepaid tuition contract shall be made until the Internal Revenue Service has issued a favorable ruling or opinion that (i) the purchaser will not be deemed to be actually or constructively in receipt of income until tuition payments are made by the Board pursuant to a tuition payment contract and (ii) assets of the Fund, including earnings accrued, are exempt from federal income taxation. If an unfavorable ruling or opinion is issued, the Board shall present a report to the Governor and the General Assembly outlining recommendations for the modification and continuance of the Fund. The Board shall also solicit responses to ruling requests from the Securities and Exchange Commission regarding the application of federal laws to the Fund prior to making any prepaid tuition contract.

§ 23-38.83. Fund property tax exempt.

The assets of the Fund and its income shall be exempt from state and local taxation.

§ 23-38.84. Deduction of certain payments from taxable income.

552 Pursuant to § 58.1-322, a purchaser may deduct from taxable income payments made under a:

553 1. Prepaid tuition contract; and

554 2. Contract with a private sector investment manager approved by the Board as equivalent to a  
555 prepaid tuition contract and meeting other criteria as established by the Board.

556 § 23-38.85. Annual report.

557 The Board shall submit an annual statement of the receipts, disbursements, and current investments  
558 of the Fund for the preceding year to the Governor and the General Assembly. The report shall set forth  
559 a complete operating and financial statement covering the operation of the Fund during the year. The  
560 Board shall cause an audit of the Fund and its assets and accounts to be made at least once a year by  
561 a certified public accountant, and the cost thereof shall be treated as a cost of operation.

562 § 23-38.86. Forms of accounts and records; audit of same.

563 The accounts and records of the Board showing the receipt and disbursement of funds from whatever  
564 source derived shall be in such form as the Auditor of Public Accounts prescribes, provided that such  
565 accounts shall correspond as nearly as possible to the accounts and records for such matters  
566 maintained by corporate enterprises. The accounts and records of the Board shall be subject to audit by  
567 the Auditor of Public Accounts on an annual basis and the costs of such audit services shall be borne  
568 by the Board.

569 § 23-38.87. Admission to institutions not guaranteed.

570 Nothing in this chapter nor in any prepaid tuition contract shall be construed as a promise or  
571 guarantee by the Board or the Commonwealth of any admission, continued enrollment, or graduation at  
572 any public two- or four-year institution of higher education in the Commonwealth.

573 Nothing in this chapter or in any prepaid tuition contract entered into pursuant to this chapter shall  
574 be construed as a promise or guarantee that the beneficiary's cost of tuition at an institution of higher  
575 education other than a public institution of higher education will be covered in full by the proceeds of  
576 the beneficiary's tuition credits.

577 § 23-38.88. Payroll deductions.

578 The Commonwealth and its agencies and municipalities and any employer in the Commonwealth are  
579 authorized to agree, by contract or otherwise, to remit payments on behalf of an employee toward  
580 prepaid tuition contracts through payroll deductions.

581 § 58.1-322. Virginia taxable income of residents.

582 A. The Virginia taxable income of a resident individual means his federal adjusted gross income for  
583 the taxable year, which excludes combat pay for certain members of the Armed Forces of the United  
584 States as provided in § 112 of the Internal Revenue Code, as amended, and with the modifications  
585 specified in this section.

586 B. To the extent excluded from federal adjusted gross income, there shall be added:

587 1. Interest, less related expenses to the extent not deducted in determining federal income, on  
588 obligations of any state other than Virginia, or of a political subdivision of any such other state unless  
589 created by compact or agreement to which Virginia is a party;

590 2. Interest or dividends, less related expenses to the extent not deducted in determining federal  
591 taxable income, on obligations or securities of any authority, commission or instrumentality of the  
592 United States, which the laws of the United States exempt from federal income tax but not from state  
593 income taxes;

594 3. Unrelated business taxable income as defined by § 512 of the Internal Revenue Code;

595 4. The amount of a lump sum distribution from a qualified retirement plan, less the minimum  
596 distribution allowance and any amount excludable for federal income tax purposes which is excluded  
597 from federal adjusted gross income solely by virtue of an individual's election to use the averaging  
598 provisions under § 402 of the Internal Revenue Code;

599 5 through 7. [Repealed.]

600 8. (Applicable for taxable years beginning on and after January 1, 1990, and before January 1, 1994.)  
601 For taxable years beginning on and after January 1, 1990, and before January 1, 1994, any amount of  
602 self-employment tax deduction under § 164 (f) of the Internal Revenue Code.

603 9. The amount required to be included in income for the purpose of computing the partial tax on an  
604 accumulation distribution pursuant to § 667 of the Internal Revenue Code.

605 C. To the extent included in federal adjusted gross income, there shall be subtracted:

606 1. Interest or dividends on obligations of the United States and on obligations or securities of any  
607 authority, commission or instrumentality of the United States to the extent exempt from state income  
608 taxes under the laws of the United States including, but not limited to, stocks, bonds, treasury bills, and  
609 treasury notes, but not including interest on refunds of federal taxes, interest on equipment purchase  
610 contracts, or interest on other normal business transactions.

611 2. Interest on obligations of this Commonwealth or of any political subdivision or instrumentality of  
612 this Commonwealth.

613 3. [Repealed.]

4. Benefits received under Title II of the Social Security Act and other benefits subject to federal income taxation solely pursuant to § 86 of the Internal Revenue Code.

4a. A deduction equal to the amount used in computing the federal credit allowed under § 22 of the Internal Revenue Code by a retiree under age sixty-five who qualified for such retirement on the basis of permanent and total disability and who is a qualified individual as defined in § 22 (b) (2) of the Internal Revenue Code; however, any person who claims a subtraction under subdivision 5 of subsection D of this section may not also claim a deduction under this subdivision.

5. The amount of any refund or credit for overpayment of income taxes imposed by the Commonwealth or any other taxing jurisdiction.

6. The amount of wages or salaries eligible for the federal Targeted Jobs Credit which was not deducted for federal purposes on account of the provisions of § 280 C (a) of the Internal Revenue Code.

7. Any amount included therein which is foreign source income as defined in § 58.1-302.

8. For taxable years beginning after December 31, 1983, the available portion of total excess cost recovery as defined in former § 58.1-323 B and for taxable years beginning after December 31, 1987, the excess cost recovery amount specified in § 58.1-323.1 B.

9. [Expired.]

10. Any amount included therein less than \$600 from a prize awarded by the State Lottery Department.

11. The wages or salaries received by any person for active and inactive service in the National Guard of the Commonwealth of Virginia, not to exceed the amount of income derived from thirty-nine calendar days of such service or \$3,000, whichever amount is less; however, only those persons in the ranks of O3 and below shall be entitled to the deductions specified herein.

12. Amounts received by an individual, not to exceed \$1,000 in any taxable year, as a reward for information provided to a law-enforcement official or agency, or to a nonprofit corporation created exclusively to assist such law-enforcement official or agency, in the apprehension and conviction of perpetrators of crimes. This provision shall not apply to the following: an individual who is an employee of, or under contract with, a law-enforcement agency, a victim or the perpetrator of the crime for which the reward was paid, or any person who is compensated for the investigation of crimes or accidents.

13. [Repealed.]

14. (Expires for taxable years beginning on and after January 1, 1999.) The amount of any qualified agricultural contribution as determined in § 58.1-322.2.

15. [Repealed.]

16. (Applicable for taxable years beginning on and after January 1, 1992, and before January 1, 1994.) The amounts of self-employment tax required to be added in computing Virginia taxable income for taxable years beginning on and after January 1, 1990, but before January 1, 1994, pursuant to subdivision B 8 of this section, as follows:

1. For taxable years beginning on and after January 1, 1994, and before January 1, 1995, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1990, and before January 1, 1991;

2. For taxable years beginning on and after January 1, 1995, and before January 1, 1996, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1991, and before January 1, 1992;

3. For taxable years beginning on and after January 1, 1996, and before January 1, 1997, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1992, and before January 1, 1993;

4. For taxable years beginning on and after January 1, 1997, and before January 1, 1998, the amount of self-employment tax added to federal adjusted gross income in taxable years beginning on and after January 1, 1993, and before January 1, 1994, and any amount of self-employment tax required to be added back for taxable years beginning on and after January 1, 1990, and before January 1, 1994, which was not subtracted in those taxable years.

17. (For applicability and expiration date - See Editor's note.) The first \$250 of interest income earned from a financial institution that has at least one office in the Commonwealth.

D. In computing Virginia taxable income there shall be deducted from federal adjusted gross income:

1. a. The amount allowable for itemized deductions for federal income tax purposes where the taxpayer has elected for the taxable year to itemize deductions on his federal return, but reduced by the amount of income taxes imposed by the Commonwealth or any other taxing jurisdiction and deducted on such federal return and increased by an amount which, when added to the amount deducted under § 170 of the Internal Revenue Code for mileage, results in a mileage deduction at the state level for such purposes at a rate of eighteen cents per mile; or

b. Two thousand dollars for taxable years beginning January 1, 1987, through December 31, 1987; \$2,700 for taxable years beginning January 1, 1988, through December 31, 1988; and \$5,000 for

675 married persons (one-half of such amounts in the case of a married individual filing a separate return);  
676 and \$3,000 for single individuals for taxable years beginning on and after January 1, 1989; provided that  
677 the taxpayer has not itemized deductions for the taxable year on his federal income tax return. For  
678 purposes of this section, any person who may be claimed as a dependent on another taxpayer's return for  
679 the taxable year may compute the deduction only with respect to earned income.

680 2. a. A deduction in the amount of \$700 for taxable years beginning January 1, 1987, through  
681 December 31, 1987, and \$800 for taxable years beginning on and after January 1, 1988, for each  
682 personal exemption allowable to the taxpayer for federal income tax purposes. For taxable years  
683 beginning on and after January 1, 1987, each blind or aged taxpayer as defined under § 63 (f) of the  
684 Internal Revenue Code shall be entitled to an additional personal exemption.

685 b. An additional deduction of \$200 for taxable years beginning January 1, 1987 through December  
686 31, 1987, for each blind or aged taxpayer as defined under § 63 (f) of the Internal Revenue Code. The  
687 additional deduction for blind or aged taxpayers allowed under this subdivision and the additional  
688 personal exemption allowed to blind or aged taxpayers under subdivision 2 a of this subsection shall be  
689 allowable regardless of whether the taxpayer itemizes deductions for the taxable year for federal income  
690 tax purposes.

691 3. A deduction equal to the amount of employment-related expenses upon which the federal credit is  
692 based under § 21 of the Internal Revenue Code for expenses for household and dependent care services  
693 necessary for gainful employment.

694 4. An additional \$1,000 deduction for each child residing for the entire taxable year in a home under  
695 permanent foster care placement as defined in Chapter 10 (§ 63.1-195 et seq.) of Title 63.1, provided the  
696 taxpayer can also claim the child as a personal exemption under § 151 of the Internal Revenue Code.

697 5. Effective for all taxable years beginning on and after January 1, 1991, a deduction in the amount  
698 of \$12,000 for taxpayers age sixty-five or older, or \$6,000 for taxpayers age sixty-two through  
699 sixty-four, less any amount received pursuant to the (i) Social Security Act or (ii) Railroad Retirement  
700 Act and treated for federal income tax purposes as equivalent to social security. Beginning in taxable  
701 year 1992, the \$12,000 and \$6,000 deduction amounts shall be indexed annually in each taxable year by  
702 an amount equivalent to the most recent percentage increase in the social security wage base.

703 6. *Payments made under a prepaid tuition contract pursuant to Chapter 4.9 (§ 23-38.75 et seq.) of*  
704 *Title 23.*

705 E. There shall be added to or subtracted from federal adjusted gross income (as the case may be) the  
706 individual's share, as beneficiary of an estate or trust, of the Virginia fiduciary adjustment determined  
707 under § 58.1-361.

708 F. There shall be added or subtracted, as the case may be, the amounts provided in § 58.1-315 as  
709 transitional modifications.