

VIRGINIA ACTS OF ASSEMBLY — CHAPTER

An Act to amend and reenact §§ 2.1-1.5, 2.1-1.6, 2.1-41.2, 9-6.25:3, and 11-35 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 23-38.87, relating to the establishment of the Virginia Higher Education Tuition Trust Fund.

[H 993]

Approved

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, and 11-35 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 23-38.87, 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.
 Board of Trustees, Virginia Museum of Fine Arts.
 Board of Trustees, Virginia Museum of Natural History.
 Board of Trustees, Virginia Outdoor Foundation.
Board of the Virginia Higher Education Tuition Trust Fund.
 Board of Visitors, Christopher Newport University.
 Board of Visitors, The College of William and Mary in Virginia.
 Board of Visitors, George Mason University.
 Board of Visitors, Gunston Hall Plantation.
 Board of Visitors, James Madison University.
 Board of Visitors, Longwood College.
 Board of Visitors, Mary Washington College.
 Board of Visitors to Mount Vernon.
 Board of Visitors, Norfolk State University.

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- 58 Board of Visitors, Old Dominion University.
- 59 Board of Visitors, Radford University.
- 60 Board of Visitors, University of Virginia.
- 61 Board of Visitors, Virginia Commonwealth University.
- 62 Board of Visitors, Virginia Military Institute.
- 63 Board of Visitors, Virginia Polytechnic Institute and State University.
- 64 Board of Visitors, Virginia State University.
- 65 Governing Board, Virginia College Building Authority.
- 66 Governing Board, Virginia Public School Authority.
- 67 Library Board, Virginia State Library and Archives.
- 68 State Board for Community Colleges, Virginia Community College System.
- 69 Commissions.
- 70 Alexandria Historical Restoration and Preservation Commission.
- 71 Chesapeake Bay Bridge and Tunnel Commission.
- 72 Hampton Roads Sanitation District Commission.
- 73 Districts.
- 74 Chesapeake Bay Bridge and Tunnel District.
- 75 Hampton Roads Sanitation District.
- 76 Educational Institutions.
- 77 Christopher Newport University.
- 78 College of William and Mary in Virginia.
- 79 Frontier Culture Museum of Virginia.
- 80 George Mason University.
- 81 James Madison University.
- 82 Jamestown-Yorktown Foundation.
- 83 Longwood College.
- 84 Mary Washington College.
- 85 Miller School of Albemarle.
- 86 Norfolk State University.
- 87 Old Dominion University.
- 88 Radford University.
- 89 The Science Museum of Virginia.
- 90 University of Virginia.
- 91 Virginia Commonwealth University.
- 92 Virginia Community College System.
- 93 Virginia Military Institute.
- 94 Virginia Museum of Fine Arts.
- 95 Virginia Polytechnic Institute and State University.
- 96 Virginia State Library and Archives.
- 97 Virginia State University.
- 98 Foundations.
- 99 Chippokes Plantation Farm Foundation.
- 100 Rural Virginia Development Foundation.
- 101 Virginia Conservation and Recreation Foundation.
- 102 Virginia Historic Preservation Foundation.
- 103 Virginia Outdoor Foundation.
- 104 Museum.
- 105 Virginia Museum of Natural History.
- 106 Plantation.
- 107 Gunston Hall Plantation.
- 108 System.
- 109 Virginia Retirement System.
- 110 § 2.1-1.6. State boards.
- 111 A. There shall be, in addition to such others as may be established by law, the following permanent
- 112 collegial bodies affiliated with a state agency within the executive branch:
- 113 Accountancy, Board for
- 114 Aging, Advisory Board on the
- 115 Agriculture and Consumer Services, Board of
- 116 Air Pollution, State Advisory Board on
- 117 Alcoholic Beverage Control Board, Virginia
- 118 Apple Board, Virginia State

119	Appomattox State Scenic River Advisory Board
120	Aquaculture Advisory Board
121	Architects, Professional Engineers, Land Surveyors and Landscape Architects, State Board for
122	Art and Architectural Review Board
123	Athletic Board, Virginia
124	Auctioneers Board
125	Audiology and Speech-Language Pathology, Board of
126	Aviation Board, Virginia
127	Barbers, Board for
128	Branch Pilots, Board for
129	Bright Flue-Cured Tobacco Board, Virginia
130	Building Code Technical Review Board, State
131	Catoctin Creek State Scenic River Advisory Board
132	Cattle Industry Board, Virginia
133	Cave Board
134	Certified Seed Board, State
135	Chesapeake Bay Local Assistance Board
136	Chickahominy State Scenic River Advisory Board
137	Child Abuse and Neglect, Advisory Board on
138	Chippokes Plantation Farm Foundation, Board of Trustees
139	Clinch Scenic River Advisory Board
140	Coal Research and Development Advisory Board, Virginia
141	Coal Surface Mining Reclamation Fund Advisory Board
142	Conservation and Development of Public Beaches, Board on
143	Conservation and Recreation, Board of
144	Contractors, Board for
145	Corn Board, Virginia
146	Correctional Education, Board of
147	Corrections, State Board of
148	Cosmetology, Board for
149	Criminal Justice Services Board
150	Dark-Fired Tobacco Board, Virginia
151	Deaf and Hard-of-Hearing, Advisory Board for the Department for the
152	Dentistry, Board of
153	Education, State Board of
154	Egg Board, Virginia
155	Emergency Medical Services Advisory Board
156	Employment Agency Advisory Board
157	Farmers Market Board, Virginia
158	Film Office Advisory Board
159	Fire Services Board, Virginia
160	Forensic Science Advisory Board
161	Forestry, Board of
162	Funeral Directors and Embalmers, Board of
163	Game and Inland Fisheries, Board of
164	Geology, Board for
165	Goose Creek Scenic River Advisory Board
166	Health Planning Board, Virginia
167	Health Professions, Board of
168	Health, State Board of
169	Hearing Aid Specialists, Board for
170	Hemophilia Advisory Board
171	Historic Resources, Board of
172	Housing and Community Development, Board of
173	Industrial Development Services Advisory Board
174	Insurance Advisory Board, State
175	Irish Potato Board, Virginia
176	Laboratory Services Advisory Board
177	Marine Products Board, Virginia
178	Medical Advisory Board, Department of Motor Vehicles
179	Medical Board of the Virginia Retirement System

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

241 Teacher Education and Licensure, Advisory Board on
 242 Tourism and Travel Services Advisory Board
 243 Toxic Substances Advisory Board
 244 Transportation Board, Commonwealth
 245 Transportation Safety, Board of
 246 Treasury Board, The, Department of the Treasury
 247 Veterans' Affairs, Board on
 248 Veterinary Medicine, Board of
 249 Virginia Board for Asbestos Licensing
 250 Virginia Employment Commission, State Advisory Board for the
 251 *Virginia Higher Education Tuition Trust Fund, Board of the*
 252 (Delayed effective date) Virginia Horse Industry Board
 253 Virginia Manufactured Housing Board
 254 Virginia Mine Safety Board
 255 Virginia Retirement System, Board of Trustees
 256 Virginia Waste Management Board
 257 Visually Handicapped, Virginia Board for the
 258 Voluntary Formulary Board, Virginia
 259 War Memorial Foundation, Virginia, Board of Trustees
 260 Waste Management Facility Operators, Board for
 261 Water Resources Research Center Statewide Advisory Board, Virginia
 262 Waterworks and Wastewater Works Operators, Board for
 263 Well Review Board, Virginia
 264 Youth and Family Services, State Board of.
 265 B. Notwithstanding the definition for "board" as provided in § 2.1-1.2, the following entities shall be
 266 referred to as boards:
 267 Compensation Board
 268 State Board of Elections
 269 State Water Control Board
 270 Virginia Parole Board
 271 Virginia Veterans Care Center Board of Trustees.
 272 § 2.1-41.2. Appointment of agency heads; chief of staff.
 273 Notwithstanding any provision of law to the contrary, the Governor shall appoint the administrative
 274 head of each agency of the executive branch of state government except the following: the Executive
 275 Director of the Virginia Port Authority, the Director of the State Council of Higher Education for
 276 Virginia, the Executive Director of the Department of Game and Inland Fisheries, the Executive Director
 277 of the Jamestown-Yorktown Foundation and, the Director of the Virginia ~~Supplemental~~ Retirement
 278 System, *and the Executive Director of the Virginia Higher Education Tuition Trust Fund.* However, the
 279 manner of selection of those heads of agencies chosen by election as of January 1, 1976, or as set forth
 280 in the Constitution of Virginia shall continue without change. Each administrative head and Secretary
 281 appointed by the Governor pursuant to this section shall be subject to confirmation by the General
 282 Assembly, shall have such professional qualifications as may be prescribed by law, and shall serve at
 283 the pleasure of the Governor. The chief of staff who may be appointed by the Governor pursuant to
 284 § 2.1-38 shall be confirmed by a majority of the members of each house of the General Assembly. For
 285 the purpose of this section, "agency" shall include all administrative units established by law or by
 286 executive order which are not arms of the legislative or judicial branches of government, which are not
 287 educational institutions as classified under §§ 9-84, 22.1-346, 23-14, and 23-252, which are not regional
 288 planning districts, regional transportation authorities or districts, or regional sanitation districts and which
 289 are not assigned by law to other departments or agencies, not including assignments to secretaries under
 290 Chapter 5.1 (§ 2.1-51.7 et seq.) of this title.
 291 § 9-6.25:3. Supervisory boards.
 292 There shall be, in addition to such others as may be designated in accordance with § 9-6.25, the
 293 following supervisory boards:
 294 Alcoholic Beverage Control Board
 295 Board for Branch Pilots
 296 Board of Commissioners, Virginia Port Authority
 297 Board of Game and Inland Fisheries
 298 Board of Regents, Gunston Hall Plantation
 299 Board of Regents, James Monroe Memorial Law Office and Library
 300 Board of Trustees, Chippokes Plantation Farm Foundation
 301 Board of Trustees, Frontier Culture Museum of Virginia

- 302 Board of Trustees, Jamestown-Yorktown Foundation
- 303 Board of Trustees, the Science Museum of Virginia
- 304 Board of Trustees, Virginia Museum of Fine Arts
- 305 Board of Trustees, Virginia Retirement System
- 306 Board of Trustees, Virginia Veterans Care Center
- 307 Board of Trustees, Virginia War Memorial Foundation
- 308 *Board of the Virginia Higher Education Tuition Trust Fund*
- 309 Board of Visitors, Christopher Newport University
- 310 Board of Visitors, George Mason University
- 311 Board of Visitors, James Madison University
- 312 Board of Visitors, Longwood College
- 313 Board of Visitors, Mary Washington College
- 314 Board of Visitors, Norfolk State University
- 315 Board of Visitors, Old Dominion University
- 316 Board of Visitors, Radford University
- 317 Board of Visitors, The College of William and Mary in Virginia
- 318 Board of Visitors, University of Virginia
- 319 Board of Visitors, Virginia Commonwealth University
- 320 Board of Visitors, Virginia Military Institute
- 321 Board of Visitors, Virginia Polytechnic Institute and State University
- 322 Board of Visitors, Virginia State University
- 323 Commonwealth's Attorneys' Services Council
- 324 Compensation Board
- 325 Governing Board, Virginia College Building Authority
- 326 Governing Board, Virginia Public School Authority
- 327 State Board for Community Colleges, Virginia Community College System
- 328 State Board of Education
- 329 State Certified Seed Board
- 330 State Council of Higher Education for Virginia
- 331 Virginia Agricultural Council
- 332 Virginia Bright Flue-Cured Tobacco Board
- 333 Virginia Board for People with Disabilities
- 334 Virginia Cattle Industry Board
- 335 Virginia Corn Board
- 336 Virginia Dark-Fired Tobacco Board
- 337 Virginia Egg Board
- 338 Virginia Horse Industry Board
- 339 Virginia Marine Products Board
- 340 Virginia Peanut Board
- 341 Virginia Pork Industry Board
- 342 Virginia Soybean Board
- 343 Virginia State Apple Board
- 344 Virginia Sweet Potato Board.
- 345 § 11-35. Title; purpose; applicability.
- 346 A. This chapter may be cited as the Virginia Public Procurement Act.
- 347 B. The purpose of this chapter is to enunciate the public policies pertaining to governmental
- 348 procurement from nongovernmental sources.
- 349 C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of
- 350 §§ 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
- 351 population of less than 3,500 as determined by the last official United States census.
- 352 D. Except to the extent adopted by such governing body, the provisions of this chapter also shall not
- 353 apply, except as stipulated in subsection E, to any county, city or town whose governing body adopts by
- 354 ordinance or resolution alternative policies and procedures which are based on competitive principles and
- 355 which are generally applicable to procurement of goods and services by such governing body and the
- 356 agencies thereof. This exemption shall be applicable only so long as such policies and procedures, or
- 357 other policies and procedures meeting the requirements of this section, remain in effect in such county,
- 358 city or town.
- 359 Except to the extent adopted by such school board, the provisions of this chapter shall not apply,
- 360 except as stipulated in subsection E, to any school division whose school board adopts by policy or
- 361 regulation alternative policies and procedures which are based on competitive principles and which are
- 362 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 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-year 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-year 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.

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

B. The Fund shall be administered by an eight-member Board, as follows: the Director of the State Council of Higher Education for Virginia or his designee; the Chancellor of the Virginia Community

College System or his designee; the State Treasurer or his designee; the State Comptroller or his designee; and four citizens, to be appointed by the Governor, with significant experience in finance, accounting, and investment management. No person holding a full-time position of employment with the Commonwealth, any county or municipality, any institution of higher education, or any agency, instrumentality, or subdivision of the foregoing shall be eligible for appointment to the Board.

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

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

§ 23-38.77. Powers and duties of Board.

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

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

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

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

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

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

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

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

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

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

§ 23-38.79. Executive director; staff support.

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

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

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, (i) at accredited, nonprofit, independent institutions of higher education located in Virginia, including actual interest and income earned on such prepayments and (ii) at public and accredited, nonprofit, independent institutions of higher education located in other states, including principal and reasonable return on such principal as determined by the Board;
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 report such unclaimed moneys to the State Treasurer pursuant to § 55-210.12 of the Code of Virginia.

§ 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 Secretary of Finance shall present a report to the Governor and the General Assembly outlining recommendations for the modification and continuance of the Fund. The Secretary 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. Annual report.

The Board shall submit an annual statement of the receipts, disbursements, and current investments of the Fund for the preceding year to the Governor and the General Assembly. The report shall set forth a complete operating and financial statement covering the operation of the Fund during the year.

§ 23-38.85. Forms of accounts and records; audit of same.

The accounts and records of the Board showing the receipt and disbursement of funds from whatever source derived shall be in such form as the Auditor of Public Accounts prescribes, provided that such

546 *accounts shall correspond as nearly as possible to the accounts and records for such matters*
547 *maintained by corporate enterprises. The Auditor of Public Accounts, or his legally authorized*
548 *representatives, shall annually audit the accounts of the Board, and the cost of such audit services as*
549 *shall be required shall be borne by the Board.*

550 *§ 23-38.86. Admission to institutions not guaranteed.*

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

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

558 *§ 23-38.87. Payroll deductions.*

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

562 **2. That the provisions of this act shall become effective on July 1, 1996.**

563 **3. That the Secretary of Finance and the Director of the State Council of Higher Education shall,**
564 **upon final passage of this act, seek the approvals and responses required by § 23-38.82, as added**
565 **to the Code of Virginia by this act. If a favorable ruling or opinion from the Internal Revenue**
566 **Service is received prior to July 1, 1996, the Board of the Virginia Higher Education Tuition Trust**
567 **Fund shall be constituted as provided in § 23-38.76, as added to the Code of Virginia by this act,**
568 **at that time.**

569 **4. That the Director of the State Council of Higher Education for Virginia shall report to the**
570 **Governor and the General Assembly by December 1, 1994, regarding methods for participation in**
571 **the fund by accredited, nonprofit, independent institutions of higher education in Virginia.**