

LD5136358

HOUSE BILL NO. 993**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Education
on February 7, 1994)

(Patron Prior to Substitute—Delegate Mims)

A BILL 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.

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.

HOUSE SUBSTITUTE

HB993H1

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

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

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

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

306 Board of Trustees, Virginia Museum of Fine Arts
307 Board of Trustees, Virginia Retirement System
308 Board of Trustees, Virginia Veterans Care Center
309 Board of Trustees, Virginia War Memorial Foundation
310 *Board of the Virginia Higher Education Tuition Trust Fund*
311 Board of Visitors, Christopher Newport University
312 Board of Visitors, George Mason University
313 Board of Visitors, James Madison University
314 Board of Visitors, Longwood College
315 Board of Visitors, Mary Washington College
316 Board of Visitors, Norfolk State University
317 Board of Visitors, Old Dominion University
318 Board of Visitors, Radford University
319 Board of Visitors, The College of William and Mary in Virginia
320 Board of Visitors, University of Virginia
321 Board of Visitors, Virginia Commonwealth University
322 Board of Visitors, Virginia Military Institute
323 Board of Visitors, Virginia Polytechnic Institute and State University
324 Board of Visitors, Virginia State University
325 Commonwealth's Attorneys' Services Council
326 Compensation Board
327 Governing Board, Virginia College Building Authority
328 Governing Board, Virginia Public School Authority
329 State Board for Community Colleges, Virginia Community College System
330 State Board of Education
331 State Certified Seed Board
332 State Council of Higher Education for Virginia
333 Virginia Agricultural Council
334 Virginia Bright Flue-Cured Tobacco Board
335 Virginia Board for People with Disabilities
336 Virginia Cattle Industry Board
337 Virginia Corn Board
338 Virginia Dark-Fired Tobacco Board
339 Virginia Egg Board
340 Virginia Horse Industry Board
341 Virginia Marine Products Board
342 Virginia Peanut Board
343 Virginia Pork Industry Board
344 Virginia Soybean Board
345 Virginia State Apple Board
346 Virginia Sweet Potato Board.
347 § 11-35. Title; purpose; applicability.
348 A. This chapter may be cited as the Virginia Public Procurement Act.
349 B. The purpose of this chapter is to enunciate the public policies pertaining to governmental
350 procurement from nongovernmental sources.
351 C. The provisions of this chapter, however, shall not apply, except as stipulated in the provisions of
352 §§ 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
353 population of less than 3,500 as determined by the last official United States census.
354 D. Except to the extent adopted by such governing body, the provisions of this chapter also shall not
355 apply, except as stipulated in subsection E, to any county, city or town whose governing body adopts by
356 ordinance or resolution alternative policies and procedures which are based on competitive principles and
357 which are generally applicable to procurement of goods and services by such governing body and the
358 agencies thereof. This exemption shall be applicable only so long as such policies and procedures, or
359 other policies and procedures meeting the requirements of this section, remain in effect in such county,
360 city or town.
361 Except to the extent adopted by such school board, the provisions of this chapter shall not apply,
362 except as stipulated in subsection E, to any school division whose school board adopts by policy or
363 regulation alternative policies and procedures which are based on competitive principles and which are
364 generally applicable to procurement of goods and services by such school board. This exemption shall
365 be applicable only so long as such policies and procedures, or other policies or procedures meeting the
366 requirements of this section, remain in effect in such school division. This provision shall not exempt
367 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.

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

429 *Commonwealth, any county or municipality, any institution of higher education, or any agency,*
430 *instrumentality, or subdivision of the foregoing shall be eligible for appointment to the Board.*

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

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

443 *§ 23-38.77. Powers and duties of Board.*

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

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

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

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

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

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

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

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

467 *§ 23-38.78. Board actions not a debt of Commonwealth.*

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

471 *§ 23-38.79. Executive director; staff support.*

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

476 *§ 23-38.80. Standard of care; investment and administration of Fund.*

477 *A. In acquiring, investing, reinvesting, exchanging, retaining, selling, and managing property for the*
478 *benefit of the Fund, the Board shall act as trustee and shall exercise the judgment of care under the*
479 *circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the*
480 *management of their own affairs, not in regard to speculation but to the permanent disposition of funds,*
481 *considering the probable income as well as the probable safety of their capital. If the annual accounting*
482 *and audit required by § 23-38.85 reveal that there are insufficient funds to ensure the actuarial*
483 *soundness of the Fund, the Board shall be authorized to adjust the terms of subsequent prepaid tuition*
484 *contracts or arrange refunds for current purchasers to ensure actuarial soundness.*

485 *B. The assets of the Fund shall be preserved, invested, and expended solely pursuant to and for the*
486 *purposes of this chapter and shall not be loaned or otherwise transferred or used by the Commonwealth*
487 *for any other purpose. Within the standard prescribed in subsection A of this section, the Board is*
488 *authorized to acquire and retain every kind of property and every kind of investment, specifically*
489 *including but not limited to (i) debentures and other corporate obligations of foreign or domestic*
490 *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, including actual interest and income earned on such 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 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 accounts shall correspond as nearly as possible to the accounts and records for such matters maintained by corporate enterprises. The Auditor of Public Accounts, or his legally authorized representatives, shall annually audit the accounts of the Board, and the cost of such audit services as shall be required shall be borne by the Board.

§ 23-38.86. Admission to institutions not guaranteed.

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- 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.**