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## SENATE BILL NO. 389

## AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the Senate Committee on Finance  
on February 8, 1996)

(Patron Prior to Substitute—Senator Walker)

*A BILL to amend and reenact §§ 2.1-116, 51.1-126, and 51.1-126.1 of the Code of Virginia and to amend the Code of Virginia by adding sections numbered 23-77.4 and 51.1-126.2, relating to the University of Virginia Medical Center.*

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

**1. That §§ 2.1-116, 51.1-126, and 51.1-126.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding sections numbered 23-77.4 and 51.1-126.2 as follows:**

§ 2.1-116. Certain officers and employees exempt from chapter.

The provisions of this chapter shall not apply to:

1. Officers and employees for whom the Constitution specifically directs the manner of selection;
2. Officers and employees of the Supreme Court and the Court of Appeals;
3. Officers appointed by the Governor, whether confirmation by the General Assembly or by either house thereof is required or not;
4. Officers elected by popular vote or by the General Assembly or either house thereof;
5. Members of boards and commissions however selected;
6. Judges, referees, receivers, arbiters, masters and commissioners in chancery, commissioners of accounts, and any other persons appointed by any court to exercise judicial functions, and jurors and notaries public;
7. Officers and employees of the General Assembly and persons employed to conduct temporary or special inquiries, investigations, or examinations on its behalf;
8. The presidents, and teaching and research staffs of state educational institutions;
9. Commissioned officers and enlisted personnel of the national guard and the naval militia;
10. Student employees in institutions of learning, and patient or inmate help in other state institutions;
11. Upon general or special authorization of the Governor, laborers, temporary employees and employees compensated on an hourly or daily basis;
12. County, city, town and district officers, deputies, assistants and employees;
13. The employees of the Virginia Workers' Compensation Commission;
14. The following officers and employees of the Virginia Retirement System: retirement system chief investment officer, retirement system investment officer, retirement system assistant investment officer and investment financial analyst;
15. Employees whose positions are identified by the State Council of Higher Education and the boards of the Virginia Museum of Fine Arts, the Science Museum of Virginia, the Jamestown-Yorktown Foundation, the Frontier Culture Museum of Virginia, the Virginia Museum of Natural History and The Library of Virginia, and approved by the Director of the Department of Personnel and Training as requiring specialized and professional training;
16. Employees of the State Lottery Department;
17. Production workers for the Virginia Industries for the Blind Sheltered Workshop programs; and
18. Employees of the Medical College of Virginia Hospitals and the University of Virginia Medical Center who are determined by the Department of Personnel and Training to be health care providers; however, any changes in compensation plans for such employees shall be subject to the review and approval of the Secretary of Education. Such employees shall remain subject to the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1; and
19. *Employees of the University of Virginia Medical Center. Any changes in compensation plans for such employees shall be subject to the review and approval of the Board of Visitors of the University of Virginia. The University of Virginia shall ensure that its procedures for hiring University of Virginia Medical Center personnel are based on merit and fitness. Such employees shall remain subject to the provisions of Chapter 10.01 (§ 2.1-116.01 et seq.) of Title 2.1; and*
20. In executive branch agencies the employee who has accepted serving in the capacity of chief deputy, or equivalent, and the employee who has accepted serving in the capacity of a confidential assistant for policy or administration. An employee serving in either one of these two positions, shall be deemed to serve on an employment at will basis. An agency may not exceed two employees who serve in this exempt capacity.

§ 23-77.4. Medical center management.

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60     *The General Assembly recognizes and finds that the economic viability of the University of Virginia*  
61 *Medical Center, hereafter referred to as the Medical Center, together with the requirement for its*  
62 *specialized management and operation, and the need of the Medical Center to participate in cooperative*  
63 *arrangements reflective of changes in health care delivery, as set forth in § 23-77.3, are dependent upon*  
64 *the ability of the management of the Medical Center to make and implement promptly decisions*  
65 *necessary to conduct the affairs of the Medical Center in an efficient, competitive manner. The General*  
66 *Assembly also recognizes and finds that it is critical to, and in the best interests of, the Commonwealth*  
67 *that the University continue to fulfill its mission of providing quality medical and health sciences*  
68 *education and related research and, through the presence of its Medical Center, continue to provide for*  
69 *the care, treatment, health-related services, and education activities associated with Virginia patients,*  
70 *including indigent and medically indigent patients. Because the General Assembly finds that the ability*  
71 *of the University to fulfill this mission is highly dependent upon revenues derived from providing health*  
72 *care through its Medical Center, and because the General Assembly also finds that the ability of the*  
73 *Medical Center to continue to be a reliable source of such revenues is heavily dependent upon its ability*  
74 *to compete with other providers of health care which are not subject to the requirements of law*  
75 *applicable to agencies of the Commonwealth, the University is hereby authorized to implement the*  
76 *following modifications to the management and operation of the affairs of the Medical Center in order*  
77 *to enhance its economic viability:*

78     1. Capital projects.

79     a. For any Medical Center capital project entirely funded by a nongeneral fund appropriation made  
80 by the General Assembly, all post-appropriation review, approval, administrative, and policy and  
81 procedure functions performed by the Department of General Services, the Division of Engineering and  
82 Buildings, the Department of Planning and Budget and any other agency that supports the functions  
83 performed by these departments are hereby delegated to the University, subject to the following  
84 stipulations and conditions: (i) the Board of Visitors shall develop and implement an appropriate system  
85 of policies, procedures, reviews and approvals for Medical Center capital projects to which this  
86 subdivision applies; (ii) the system so adopted shall provide for the review and approval of any Medical  
87 Center capital project to which this subdivision applies in order to ensure that, except as provided in  
88 clause (iii), the cost of any such capital project does not exceed the sum appropriated therefor and that  
89 the project otherwise complies with all requirements of the Code of Virginia regarding capital projects,  
90 excluding only the post-appropriation review, approval, administrative, and policy and procedure  
91 functions performed by the Department of General Services, the Division of Engineering and Buildings,  
92 the Department of Planning and Budget and any other agency that supports the functions performed by  
93 these departments; (iii) the Board of Visitors may, during any fiscal year, approve a transfer of up to a  
94 total of fifteen percent of the total nongeneral-fund appropriation for the Medical Center in order to  
95 supplement funds appropriated for a capital project or capital projects of the Medical Center, provided  
96 that the Board of Visitors finds that the transfer is necessary to effectuate the original intention of the  
97 General Assembly in making the appropriation for the capital project or projects in question; (iv) the  
98 University shall report to the Department of General Services on the status of any such capital project  
99 prior to commencement of construction of, and at the time of acceptance of, any such capital project;  
100 and (v) the University shall ensure that BOCA Code and fire safety inspections of any such project are  
101 conducted and that such projects are inspected by the State Fire Marshal or his designee prior to  
102 certification for building occupancy by the University's assistant state building official to whom such  
103 inspection responsibility has been delegated pursuant to § 36-98.1. Nothing in this section shall be  
104 deemed to relieve the University of any reporting requirement pursuant to §§ 2.1-403 and 2.1-404.  
105 Notwithstanding the foregoing, the terms and structure of any financing of any capital project to which  
106 this subdivision applies shall be approved pursuant to § 2.1-179.

107     b. No capital project to which this subdivision applies shall be materially increased in size or  
108 materially changed in scope beyond the plans and justifications which were the basis for the project's  
109 appropriation unless: (i) the Governor determines that such increase in size or change in scope is  
110 necessary due to an emergency or (ii) the General Assembly approves the increase or change in a  
111 subsequent appropriation for the project. After construction of any such capital project has commenced,  
112 no such increase or change may be made during construction unless the conditions in (i) or (ii) have  
113 been satisfied.

114     2. Leases of property.

115     a. The University shall be exempt from the provisions of § 2.1-504.2 and from any rules, regulations  
116 and guidelines of the Division of Engineering and Buildings in relation to leases of real property which  
117 it enters into on behalf of the Medical Center and, pursuant to policies and procedures adopted by the  
118 Board of Visitors, may enter into such leases subject to the following conditions: (i) the lease must be a  
119 real property lease and not a capital lease as defined in guidelines established by the Secretary of  
120 Finance; (ii) the University's decision to enter into such a lease shall be based upon cost, demonstrated  
121 need, and compliance with guidelines adopted by the Board of Visitors which direct that competition be

sought to the maximum practical degree, that all costs of occupancy be considered, and that the use of the space to be leased actually is necessary and is efficiently planned; (iii) the form of the lease is approved by the Special Assistant Attorney General representing the University; (iv) the lease otherwise meets all requirements of law; and (v) the leased property is certified for occupancy.

b. Notwithstanding the provisions of §§ 2.1-511 and 23-4.1, but subject to policies and procedures adopted by the Board of Visitors, the University may lease, for a purpose consistent with the mission of the Medical Center and for a term not to exceed fifty years, property in the possession or control of the Medical Center.

c. Notwithstanding the foregoing, the terms and structure of any financing arrangements secured by capital leases or other similar lease financing agreements shall be approved pursuant to § 2.1-179.

### 3. Procurement of goods, services and construction.

Contracts awarded by the University in compliance with this section, on behalf of the Medical Center, for the procurement of goods, services, including professional services, and construction, shall be exempt from (i) the Virginia Public Procurement Act (§ 11-35 et seq.), except as provided below; (ii) Article 3 (§ 2.1-435 et seq.) of Chapter 32 of Title 2.1; and (iii) Article 5 (§ 2.1-480 et seq.) of Chapter 32 of Title 2.1 regarding the review and approval of contracts for the construction of Medical Center capital projects; however, the provisions of this paragraph may not be implemented by the University until such time as the Board of Visitors has adopted guidelines generally applicable to the procurement of goods, services and construction by the Medical Center or by the University on behalf of the Medical Center. Such guidelines shall be based upon competitive principles and shall in each instance seek competition to the maximum practical degree. The guidelines shall implement a system of competitive negotiation for professional services; shall prohibit discrimination because of race, religion, color, sex, or national origin of the bidder or offeror in the solicitation or award of contracts; may take into account in all cases the dollar amount of the intended procurement, the term of the anticipated contract, and the likely extent of competition; may implement a prequalification procedure for contractors or products; may include provisions for cooperative procurement arrangements with private health or educational institutions, or with public agencies or institutions of the several states, territories of the United States or the District of Columbia; shall incorporate the prompt payment principles of §§ 11-62.10 and 11-62.11; and may implement provisions of law. The following sections of the Virginia Public Procurement Act shall continue to apply to procurements by the Medical Center or by the University on behalf of the Medical Center: §§ 11-49, 11-51, 11-52 (which section shall not be construed to require compliance with the prequalification application procedures of subsection B of § 11-46), 11-54, 11-56 through 11-61, and 11-72 through 11-80.

§ 51.1-126. Certain employees of institutions of higher education.

A. Any institution of higher education which has established, or establishes, a retirement plan covering in whole or in part its employees who are engaged in the performance of teaching, administrative, or research duties is hereby authorized to make contributions for the benefit of its employees who elect to participate in such plan rather than in the retirement system established by this chapter. Any present or future employee of such institution may elect to participate in either the retirement system established by this chapter or the plan provided by the institution employing him, in accordance with guidelines established by the Virginia Retirement System. The election herein provided shall, as to any future employee, be exercised not later than ninety days from the time of entry upon the performance of his duties. The University of Virginia is authorized on and after July 1, 1996, to transfer any University of Virginia Medical Center employee who is a participant in a retirement plan established pursuant to this section to any retirement plan established pursuant to § 51.1-126.2 as an alternative to the retirement system established by this chapter, provided that the employee has elected to transfer to the plan established pursuant to § 51.1-126.2. All University of Virginia Medical Center employees who are (i) first employed by the Medical Center on or after the effective date of any retirement plan established pursuant to § 51.1-126.2 and (ii) engaged in the performance of teaching, administrative or research duties, shall be afforded the retirement plan election options provided by § 51.1-126.2 rather than the election options provided by this section.

B. No employee of an institution of higher education who is an active member in a plan established under this section shall also be an active member of the retirement system or beneficiary other than a contingent annuitant.

C. 1. The contribution by the Commonwealth to such employee's retirement plan shall be 10.4 percent of creditable compensation. An institution of higher education may adopt a supplementation program for participants who, before January 1, 1991, exercise or have exercised the election to participate in the plan provided by the institution employing him as referred to in subsection A. Under such supplementation program, the institution may supplement such contribution using funds other than general funds, tuition or fees, up to an additional 2.17 percent of creditable compensation. Any employee of the University of Virginia Medical Center who participated in a retirement plan established pursuant

183 to this section prior to the effective date of such employee's transfer to a retirement plan established  
184 under § 51.1-126.2 shall continue to receive the contribution by the Commonwealth, and any  
185 supplementation thereof by the University, at the contribution and supplementation rates which were in  
186 effect on the effective date of such transfer.

187 2. These contribution rates shall be examined by the Secretary of Administration prior to July 1,  
188 1996, and at least once every six years thereafter. The Secretary shall consider the salary peer group  
189 mean contribution as determined by the State Council of Higher Education and the position of the  
190 Virginia Retirement System actuary, and, if necessary, recommend a revision to the rate of contribution  
191 by the Commonwealth.

192 D. The Virginia Retirement System shall develop policies and procedures, as approved by the  
193 Secretaries of Administration and Education, for the administration of all retirement plans established  
194 pursuant to this section. Such policies and procedures shall not, under any circumstances, result in the  
195 elimination of any benefit program at any institution as such benefit program existed on June 30, 1991.

196 § 51.1-126.1. Certain employees of teaching hospitals.

197 A. Any teaching hospital affiliated with an institution of higher education, *other than the University*  
198 *of Virginia Medical Center*, may establish a retirement plan covering in whole or in part its employees  
199 who are health care providers, as determined by the Department of Personnel and Training pursuant to  
200 § 2.1-116, and is authorized to make contributions for the benefit of its employees who elect to  
201 participate in such plan or arrangement rather than in the retirement system established by this chapter.  
202 Any such alternative retirement plan shall not become effective until July 1, 1991, or any time  
203 thereafter, as determined by such teaching hospital. Any health care provider employed by such teaching  
204 hospital on or after July 1, 1991, may make an irrevocable election to participate in either the retirement  
205 plan established by this chapter or the plan provided by the teaching hospital, in accordance with  
206 guidelines established by the Virginia Retirement System. The election herein provided shall, as to any  
207 health care provider employed after the alternative retirement plan implementation date, be exercised not  
208 later than thirty-one days from the time of entry upon the performance of his duties.

209 B. No health care provider employed by a teaching hospital who is an active member of a plan  
210 established under this section shall also be an active member of the retirement system or a beneficiary  
211 other than a contingent annuitant.

212 C. The contribution by the Commonwealth to any other retirement plan established on behalf of  
213 health care providers as provided in subsection A shall be the contribution by the Commonwealth which  
214 would be required if the health care provider were a member of the retirement system or eight percent  
215 of creditable compensation, whichever is less.

216 D. If the institution of higher education with which the teaching hospital is affiliated has adopted a  
217 retirement plan under § 51.1-126 for its employees who are engaged in the performance of teaching,  
218 administrative, or research duties, the plan established under this section shall offer the same investment  
219 opportunities as are available to the participants of the plan established under § 51.1-126.

220 E. The Virginia Retirement System shall develop policies and procedures, as approved by the  
221 Secretaries of Administration and Education, for the administration of the retirement plan established  
222 under this section.

223 § 51.1-126.2. *Employees of the University of Virginia Medical Center.*

224 A. *The University of Virginia Medical Center, hereafter referred to as the Medical Center, may*  
225 *establish one or more retirement plans covering in whole or in part its employees, including employees*  
226 *who, prior to the effective date of any plan established pursuant to this section, had been participants in*  
227 *any plan established pursuant to § 51.1-126 or § 51.1-126.1. The Medical Center is authorized to make*  
228 *contributions for the benefit of its employees who elect to participate in any plan established pursuant to*  
229 *this section rather than in any other retirement plan established by this chapter. Any such alternative*  
230 *retirement plans for Medical Center employees shall not become effective until such time as the Board*  
231 *of Visitors of the University of Virginia may determine. Any employee of the Medical Center may make*  
232 *an irrevocable election to participate in the retirement system established by this chapter or any plan*  
233 *provided by the Medical Center in accordance with guidelines established by the University of Virginia*  
234 *Board of Visitors. The election herein provided shall, as to any Medical Center employee commencing*  
235 *employment following the effective date of any plan established pursuant to this section, be exercised not*  
236 *later than ninety days following the date the employee commences performing his duties.*

237 B. *No employee of the Medical Center who is an active member of any plan established under this*  
238 *section shall also be an active member of the retirement system established by this chapter or a*  
239 *beneficiary of such other plan other than as a contingent annuitant.*

240 C. *The contribution by the Medical Center to any retirement plan established on behalf of employees*  
241 *of the Medical Center as provided in subsection A shall be eight percent of creditable compensation.*

242 D. *The guidelines adopted by the Board of Visitors under subsection A shall be filed with the Board*  
243 *Trustees of the Virginia Retirement System.*

244 2. **That any alternative retirement plan for health care provider employees of the University of**

245 Virginia Medical Center which was in effect prior to July 1, 1996, pursuant to § 51.1-126.1 of the  
246 Code of Virginia, shall remain in effect until the alternative retirement plan for such employees  
247 established pursuant to § 51.1-126.2 of the Code of Virginia is implemented.