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HOUSE BILL NO. 2866**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations
on February 4, 2005)

(Patron Prior to Substitute—Delegate Callahan)

A BILL to amend and reenact §§ 2.2-1124, 2.2-1132, 2.2-1149, 2.2-1150, 2.2-1153, 2.2-1514, 2.2-2007, 2.2-2901, 23-9.6:1, and 36-98.1 of the Code of Virginia; to amend the Code of Virginia by adding a section numbered 2.2-1404.1, by adding in Title 2.2 a chapter numbered 50.1 consisting of sections numbered 2.2-5004 and 2.2-5005, by adding sections numbered 23-9.2:3.02 and 23-9.6:1.01, by adding in Title 23 a chapter numbered 4.10, consisting of Subchapters 1, 2, and 3 and sections numbered 23-38.88 through 23-38.122, and by adding a section numbered 30-133.1; relating to public institutions of higher education.

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-1124, 2.2-1132, 2.2-1149, 2.2-1150, 2.2-1153, 2.2-1514, 2.2-2007, 2.2-2901, 23-9.6:1, and 36-98.1 of the Code of Virginia are amended and reenacted, and that the Code of Virginia is amended by adding a section numbered 2.2-1404.1, by adding in Title 2.2 a chapter numbered 50.1, consisting of sections numbered 2.2-5004 and 2.2-5005, by adding sections numbered 23-9.2:3.02 and 23-9.6:1.01, by adding in Title 23 a chapter numbered 4.10, consisting of Subchapters 1, 2, and 3 and sections numbered 23-38.88 through 23-38.122, and by adding a section numbered 30-133.1 as follows:

§ 2.2-1124. Disposition of surplus materials.

A. "Surplus materials" means personal property including, but not limited to, materials, supplies, equipment, and recyclable items, but shall not include property as defined in § 2.2-1147 that is determined to be surplus. Surplus materials shall not include finished products that a mental health or mental retardation facility sells for the benefit of its patients or residents, provided that (i) most of the supplies, equipment, or products have been donated to the facility; (ii) the patients or residents of the facility have substantially altered the supplies, equipment, or products in the course of occupational or other therapy; and (iii) the substantial alterations have resulted in a finished product.

B. The Department shall establish procedures for the disposition of surplus materials from departments, divisions, institutions, and agencies of the Commonwealth. Such procedures shall:

1. Permit surplus materials to be transferred between or sold to departments, divisions, institutions, or agencies of the Commonwealth;

2. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as clinics for the indigent and uninsured that are organized for the delivery of primary health care services (i) as federally qualified health centers designated by the Health Care Financing Administration or (ii) at a reduced or sliding fee scale or without charge;

3. Permit public sales or auctions, provided that the procedures provide for sale to all political subdivisions and any volunteer rescue squad or volunteer fire department established pursuant to § 15.2-955 any surplus materials prior to the public sale or auction;

4. Permit surplus motor vehicles to be sold prior to public sale or auction to local social service departments for the purpose of resale at cost to TANF recipients;

5. Permit surplus materials to be sold to Virginia charitable corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and operating as children's homes;

6. Permit donations to political subdivisions of the Commonwealth under the circumstances specified in this section;

7. Permit other methods of disposal when (a) the cost of the sale will exceed the potential revenue to be derived therefrom or (b) the surplus material is not suitable for sale;

8. Permit any dog especially trained for police work to be sold at an appropriate price to the handler who last was in control of the dog, which sale shall not be deemed a violation of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.);

9. Permit the transfer of surplus clothing to an appropriate department, division, institution, or agency of the Commonwealth for distribution to needy individuals by and through local social services boards;

10. Encourage the recycling of paper products, beverage containers, and used motor oil;

11. Require the proceeds from any sale or recycling of surplus materials be promptly deposited into the state treasury in accordance with § 2.2-1802 and report the deposit to the State Comptroller;

12. Permit donations of surplus computers and related equipment to public schools in the Commonwealth and Virginia charitable corporations granted tax-exempt status under § 501 (c) (3) of the Internal Revenue Code and providing services to persons with disabilities, at-risk youths, or low-income

60 families. For the purposes of this subdivision, "at-risk youths" means school-age children approved
61 eligible to receive free or reduced price meals in the federally funded lunch program; ~~and~~

62 13. Permit surplus materials to be transferred or sold, prior to public sale or auction, to public
63 television stations located in the state and other nonprofit organizations approved for the distribution of
64 federal surplus materials; ; *and*

65 14. *Permit a public institution of higher education to dispose of its surplus materials at the location*
66 *where the surplus materials are held and to retain any proceeds from such disposal, provided that the*
67 *institution meets the conditions prescribed in subsection B of § 23-38.88.*

68 C. The Department shall dispose of surplus materials pursuant to the procedures established in
69 subsection B or permit any department, division, institution, or agency of the Commonwealth to dispose
70 of its surplus materials consistent with the procedures so established. No surplus materials shall be
71 disposed of without prior consent of the head of the department, division, institution, or agency of the
72 Commonwealth in possession of such surplus materials or the Governor.

73 D. Departments, divisions, institutions, or agencies of the Commonwealth or the Governor may
74 donate surplus materials only under the following circumstances:

75 1. Emergencies declared in accordance with § 44-146.18:2 or § 44-146.28;

76 2. As set forth in the budget bill as defined by § 2.2-1509, provided that (a) the budget bill contains
77 a description of the surplus materials, the method by which the surplus materials shall be distributed,
78 and the anticipated recipients, and (b) such information shall be provided by the Department to the
79 Department of Planning and Budget in sufficient time for inclusion in the budget bill;

80 3. When the market value of the surplus materials, which shall be donated for a public purpose, is
81 less than \$500; however, the total market value of all surplus materials so donated by any department,
82 division, institution, or agency shall not exceed 25 percent of the revenue generated by such
83 department's, division's, institution's, or agency's sale of surplus materials in the fiscal year, except these
84 limits shall not apply in the case of surplus computer equipment and related items donated to Virginia
85 public schools; or

86 4. During a local emergency, upon written request of the head of a local government or a political
87 subdivision in the Commonwealth to the head of a department, division, institution, or agency.

88 E. On or before October 1 of each year, the Department shall prepare, and file with the Secretary of
89 the Commonwealth, a plan that describes the expected disposition of surplus materials in the upcoming
90 fiscal year pursuant to subdivision B 6.

91 § 2.2-1132. Administration of capital outlay construction; exception for certain educational
92 institutions.

93 A. The Division shall provide assistance in the administration of capital outlay construction projects
94 set forth in the appropriation act, other than highway construction undertaken by the Department of
95 Transportation and the acquisition or improvement of specialized cargo-handling equipment and related
96 port infrastructure including, but not limited to, port construction, renovation, and demolition that is
97 required in a timely manner to meet market demands to enhance commerce through the Virginia Port
98 Authority, the review and approval of plans and specifications, and acceptance of completed projects.

99 B. The Division may establish standards, as needed, for construction by the Commonwealth and may,
100 with the advice of the Attorney General, establish standard contract provisions and procedures for the
101 procurement and administration of construction and for the procurement and administration of
102 architectural and engineering services relating to construction, which shall be used by all departments,
103 agencies and institutions of the Commonwealth. The standards may provide for incentive contracting that
104 offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the
105 Commonwealth when project costs are reduced by the contractor, without affecting project quality,
106 during construction of the project. The fee, if any, charged by the project engineer or architect for
107 determining the cost savings shall be paid as a separate cost and shall not be calculated as part of any
108 cost savings.

109 C. *Notwithstanding any standards established by the Division or law to the contrary except as*
110 *provided in this subsection, any public institution of higher education that has in effect a signed*
111 *memorandum of understanding with the Secretary of Administration regarding participation in the*
112 *nongeneral fund decentralization program as set forth in the appropriation act may enter into contracts*
113 *for specific construction projects without the review and approval of the Bureau of Capital Outlay*
114 *Management, provided such institutions are in compliance with the requirements of the Virginia Public*
115 *Procurement Act (§ 2.2-4300 et seq.). The authority granted in this subsection shall only become*
116 *effective if the institution meets the conditions prescribed in subsection B of § 23-38.88. The Secretary of*
117 *Administration shall establish guidelines to assist institutions in evaluating alternative project delivery*
118 *methods prior to entering into a contract.*

119 For purposes of this section, "construction" shall include new construction, reconstruction, renovation,
120 restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned
121 or to be acquired by the Commonwealth. It shall not include buildings or other facilities ancillary to the

use of state highways that are located within the right-of-way of any state highway, or assets for use by the Virginia Port Authority within the boundaries of property owned or leased by the Virginia Port Authority.

§ 2.2-1149. Department to review proposed acquisitions of real property; approval by the Governor; exceptions.

Notwithstanding any provision of law to the contrary, no state department, agency or institution shall acquire real property by gift, lease, purchase or any other means without following the guidelines adopted by the Department and obtaining the prior approval of the Governor. The Department shall review every proposed acquisition of real property by gift, lease, purchase or any other means by any department, agency or institution of the Commonwealth and recommend either approval or disapproval of the transactions to the Governor based on cost, demonstrated need, and compliance with the Department's guidelines.

The provisions of this section shall not apply to the (i) acquisition:

1. Acquisition of real property for open space preservations pursuant to the purposes of § 10.1-1800 and subdivision A- 4- of § 10.1-2204, if it does not require as a condition of acceptance, an appropriation of any state funds for the continued maintenance of such property;

(ii) acquisition 2. Acquisition of easements pursuant to the purposes of §§ 10.1-1020 and 10.1-1021 or §§ 10.1-1700, 10.1-1702, and 10.1-1702;

(iii) acquisition 3. Acquisition through the temporary lease or donation of real property for a period of six months or less duration;

4. Acquisition of easements by public institutions of higher education provided that the particular institution meets the conditions prescribed in subsection B of § 23-38.88;

5. Acquisition of an operating/income lease or a capital lease by a public institution of higher education, provided that (i) the capital lease does not impact the Commonwealth's debt capacity, (ii) the institution meets the conditions prescribed in subsection B of § 23-38.88, and (iii) for purposes of the acquisition of a capital lease, the institution shall have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act. For the purposes of this subdivision, an operating/income lease or a capital lease shall be determined using generally accepted accounting principles; or

(iv) acquisition 6. Acquisition of real property for the construction, improvement or maintenance of highways and transportation facilities and purposes incidental thereto by the Department of Transportation; however, acquisitions of real property by the Department of Transportation for office space, district offices, residencies, area headquarters, or correctional facilities shall be subject to the Department's review and the Governor's approval.

–§ 2.2-1150. Conveyance and transfers of real property by state agencies; approval of Governor and Attorney General.

A. When it is deemed to be in the public interest,

1. Property owned by the Commonwealth may be sold, leased, or other interests therein conveyed to political subdivisions, public authorities, or the federal government, for such consideration as is deemed proper; and

2. Property owned by the Commonwealth and held in the possession of a department, agency or institution of the Commonwealth may be transferred to the possession of another department, agency or institution of the Commonwealth by the execution of an agreement between the heads of such departments, agencies or institutions.

B. No transaction authorized by this section shall be made without the prior written recommendation of the Department to the Governor, the written approval of the Governor of the transaction itself, and the approval of the Attorney General as to the form of the instruments prior to execution.

C. Notwithstanding the provisions of subsection B, a public institution of higher education may convey an easement pertaining to any property such institution owns or controls provided that the institution meets the conditions prescribed in subsection B of § 23-38.88.

§ 2.2-1153. State agencies and institutions to notify Division of property not used or required; criteria.

A. Whenever any department, agency or institution of state government possesses or has under its control state-owned property that is not being used or is not required for the programs of the department, agency or institution, it shall so notify the Division. Each department, agency and institution shall submit to the Division a land use plan for property it possesses or has under its control showing present and planned uses of such property. Such plan shall be approved by the cognizant board or governing body of the department, agency or institution holding title to or otherwise controlling the state-owned property or the agency head in the absence of a board or governing body, with a recommendation on whether any property should be declared surplus by the department, agency or institution. Development of such land use plans shall be based on guidelines promulgated by the

183 Division. The guidelines shall provide that each land use plan shall be updated and copies provided to
184 the Division by September 1 of each year. The Division may exempt properties that are held and used
185 for conservation purposes from the requirements of this section. The Division shall review the land use
186 plans and determine whether the property or any portion thereof should be declared surplus to the needs
187 of the Commonwealth. By October 1 of each year, the Division shall provide a report to the Chairmen
188 of the House Appropriations and Senate Finance Committees setting forth the Division's findings, the
189 sale or marketing of properties identified pursuant to this section, and recommending any actions that
190 may be required by the Governor and the General Assembly to identify and dispose of property not
191 being efficiently and effectively utilized.

192 Until permanent disposition of the property determined to be surplus is effected, the property shall
193 continue to be maintained by the department, agency or institution possessing or controlling it, unless
194 upon the recommendation of the Department, the Governor authorizes the transfer of the property to the
195 possession or control of the Department. In this event, the department, agency or institution formerly
196 possessing or controlling the property shall have no further interest in it.

197 B. The Division shall establish criteria for ascertaining whether property under the control of a
198 department, agency or institution should be classified as "surplus" to its current or proposed needs. Such
199 criteria shall provide that the cognizant board or governing body, if any, of the department, agency or
200 institution holding the title to or otherwise controlling the state-owned property, or the agency head in
201 the absence of a board or governing body, shall approve the designation of the property as surplus.

202 C. Notwithstanding the provisions of subsection A, ~~the~~:

203 1. The property known as College Woods, which includes Lake Matoaka and is possessed and
204 controlled by a college founded in 1693, regardless of whether such property has been declared surplus
205 pursuant to this section, shall not be transferred or disposed of without the approval of the board of
206 visitors of such college by a two-thirds vote of all board members at a regularly scheduled board
207 meeting. The General Assembly shall also approve the disposal or transfer.

208 2. *Surplus real property valued at less than \$5 million that is possessed and controlled by a public*
209 *institution of higher education may be sold by such institution, provided that the institution gives written*
210 *notification to the Governor and the Chairmen of the House Appropriations and Senate Finance*
211 *Committees at least 30 days prior to the sale of the property. Proceeds from the sale of such property*
212 *shall be retained by the public institution of higher education if the property was acquired by the*
213 *institution through the use of nongeneral funds. If the institution originally acquired the property*
214 *through a mix of general and nongeneral funds, 50 percent of the proceeds shall be distributed to the*
215 *institution and 50 percent of the proceeds shall be deposited into the State Park Conservation Resources*
216 *Fund established under subsection A of § 10.1-202. The authority of a public institution of higher*
217 *education to sell surplus property or to retain any proceeds from the sale of surplus property shall be*
218 *subject to the institution meeting the conditions prescribed in subsection B of § 23-38.88.*

219 § 2.2-1404.1. *Use of vendors identified by public institutions of higher education as minority business*
220 *enterprises.*

221 *For purposes of compliance with § 2.2-4310, a public institution of higher education may procure*
222 *goods, services, and construction from vendors identified by such public institutions of higher education*
223 *as a minority business enterprise based on criteria approved by the Department. The certification shall*
224 *remain in effect unless and until the Department notifies the institution that the vendor does not meet*
225 *the certification requirements. However, if the public institution of higher education does not meet the*
226 *conditions prescribed in subsection B of § 23-38.88, the institution shall not receive any credit for*
227 *minority business procurement for procuring goods, services, and construction from vendors it had*
228 *identified as minority business enterprises that are subsequently not certified as such by the Department*
229 *for the period in which the goods, services, or construction were procured.*

230 § 2.2-1514. Designation of general fund for nonrecurring expenditures.

231 A. As used in this section:

232 "The Budget Bill" means the "The Budget Bill" submitted pursuant to § 2.2-1509, including any
233 amendments to a general appropriation act pursuant to such section.

234 "Nonrecurring expenditures" means the acquisition or construction of capital outlay projects as
235 defined in § 2.2-1503.2, the acquisition or construction of capital improvements, the acquisition of land,
236 the acquisition of equipment, or other expenditures of a one-time nature as specified in the general
237 appropriation act.

238 B. At the end of each fiscal year, the Comptroller shall designate within his annual report pursuant to
239 § 2.2-813 an amount for nonrecurring expenditures, which shall equal the remaining amount of the
240 general fund balance that is not otherwise reserved or designated. No such designation shall be made
241 unless the full amounts required for other reserves or designations including, but not limited to, (i) the
242 Revenue Stabilization Fund deposit pursuant to § 2.2-1829, (ii) the Virginia Water Quality Improvement
243 Fund deposit pursuant to § 10.1-2128, (iii) capital outlay reappropriations pursuant to the general
244 appropriation act, (iv) operating expense reappropriations pursuant to the general appropriation act, (v)

interest payments on deposits of certain public institutions of higher education pursuant to § 2.2-5005, (vi) reappropriations and allotments for expenditure of unexpended appropriations of certain public institutions of higher education pursuant to § 2.2-5005, (vii) pro rata rebate payments to certain public institutions of higher education pursuant to § 2.2-5005, and ~~(viii)~~ the unappropriated balance anticipated in the general appropriation act for the end of such fiscal year are set aside.

C. The Governor shall include in "The Budget Bill" pursuant to § 2.2-1509 recommended appropriations from the general fund or recommended amendments to general fund appropriations in the general appropriation act in effect at that time an amount for nonrecurring expenditures equal to the amount designated by the Comptroller for such purpose pursuant to the provisions of subsection B of this section.

§ 2.2-2007. Powers of the CIO.

A. In addition to such other duties as the Board may assign, the CIO shall:

1. Monitor trends and advances in information technology; develop a comprehensive, statewide, four-year strategic plan for information technology to include specific projects that implement the plan; and plan for the acquisition, management, and use of information technology by state agencies. The statewide plan shall be updated annually and submitted to the Board for approval. In developing and updating the plan, the CIO shall consider the advice and recommendations of the Council on Technology Services created pursuant to § 2.2-2651.

2. Direct the formulation and promulgation of policies, guidelines, standards, and specifications for the purchase, development, and maintenance of information technology for state agencies, including, but not limited to, those (i) required to support state and local government exchange, acquisition, storage, use, sharing, and distribution of geographic or base map data and related technologies, (ii) concerned with the development of electronic transactions including the use of electronic signatures as provided in § 59.1-496, and (iii) necessary to support a unified approach to information technology across the totality of state government, thereby assuring that the citizens and businesses of the Commonwealth receive the greatest possible security, value, and convenience from investments made in technology.

3. Direct the development of policies and procedures, in consultation with the Department of Planning and Budget, that are integrated into the Commonwealth's strategic planning and performance budgeting processes, and that state agencies and public institutions of higher education shall follow in developing information technology plans and technology-related budget requests. Such policies and procedures shall require consideration of the contribution of current and proposed technology expenditures to the support of agency and institution priority functional activities, as well as current and future operating expenses, and shall be utilized by all state agencies and public institutions of higher education in preparing budget requests.

4. Review budget requests for information technology from state agencies and public institutions of higher education and recommend budget priorities to the Information Technology Investment Board.

~~This review~~ Review of such budget requests shall include, but not be limited to, all data processing or other related projects for amounts exceeding \$100,000 in which the agency or institution has entered into or plans to enter into a contract, agreement or other financing agreement or such other arrangement that requires that the Commonwealth either pay for the contract by foregoing revenue collections, or allows or assigns to another party the collection on behalf of or for the Commonwealth any fees, charges, or other assessments or revenues to pay for the project. For each project, the agency or institution, with the exception of public institutions of higher education that meet the conditions prescribed in subsection B of § 23-38.88, shall provide the CIO (i) a summary of the terms, (ii) the anticipated duration, and (iii) the cost or charges to any user, whether a state agency or institution or other party not directly a party to the project arrangements. The description shall also include any terms or conditions that bind the Commonwealth or restrict the Commonwealth's operations and the methods of procurement employed to reach such terms.

5. Direct the development of policies and procedures for the effective management of information technology investments throughout their entire life cycles, including, but not limited to, project definition, procurement, development, implementation, operation, performance evaluation, and enhancement or retirement. Such policies and procedures shall include, at a minimum, the periodic review by the CIO of agency and public institution of higher education information technology projects estimated to cost \$1 million or more or deemed to be mission-critical or of statewide application by the CIO.

6. Oversee and administer the Virginia Technology Infrastructure Fund created pursuant to § 2.2-2023.

7. Periodically evaluate the feasibility of outsourcing information technology resources and services, and outsource those resources and services that are feasible and beneficial to the Commonwealth.

8. Report annually to the Governor and the Joint Commission on Technology and Science created pursuant to § 30-85 on the use and application of information technology by state agencies and public

institutions of higher education to increase economic efficiency, citizen convenience, and public access to state government.

9. Direct the development of policies and procedures that require VITA to review information technology projects proposed by state agencies and institutions exceeding \$100,000, and recommend whether such projects be approved or disapproved. The CIO shall disapprove projects between \$100,000 and \$1 million that do not conform to the statewide information plan or to the individual plans of state agencies or institutions of higher education.

B. Consistent with § 2.2-2012, the CIO may enter into public-private partnership contracts to finance or implement information technology programs and projects. The CIO may issue a request for information to seek out potential private partners interested in providing programs or projects pursuant to an agreement under this subsection. The compensation for such services shall be computed with reference to and paid from the increased revenue or cost savings attributable to the successful implementation of the program or project for the period specified in the contract. The CIO shall be responsible for reviewing and approving the programs and projects and the terms of contracts for same under this subsection. The CIO shall determine annually the total amount of increased revenue or cost savings attributable to the successful implementation of a program or project under this subsection and such amount shall be deposited in the Virginia Technology Infrastructure Fund created in § 2.2-2023. The CIO is authorized to use moneys deposited in the Fund to pay private partners pursuant to the terms of contracts under this subsection. All moneys in excess of that required to be paid to private partners, as determined by the CIO, shall be reported to the Comptroller and retained in the Fund. The CIO shall prepare an annual report to the Governor and General Assembly on all contracts under this subsection, describing each information technology program or project, its progress, revenue impact, and such other information as may be relevant.

§ 2.2-2901. Appointments, promotions and tenure based upon merit and fitness.

A. In accordance with the provisions of this chapter all appointments and promotions to and tenure in positions in the service of the Commonwealth shall be based upon merit and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications by the respective appointing authorities.

Persons holding positions in the service of the Commonwealth on July 1, 1952, shall be deemed to be holding their positions as though they had received appointment under the terms of this chapter.

B. Persons who leave the service of the Commonwealth for service in any of the armed forces of the United States shall be entitled to be restored to such positions upon the termination of their service with the armed forces, provided such persons, except for good cause shown, have filed an application for restoration to such positions within ~~ninety~~ 90 calendar days following such termination of military service, accompanied by a certificate attesting that the military duty was satisfactorily performed. Such persons shall thereafter hold such positions as though they had received appointment under the terms of this chapter, except as to any such position which, in the meantime, may have been abolished. Any such former employee returning to, or applying for, employment in the state service, as provided by this section, shall be considered as having at least as favorable a status with reference to this chapter as he would have occupied if his service had been continuous.

C. No establishment of a position or rate of pay, and no change in rate of pay shall become effective except on order of the appointing authority and approval by the Governor. This subsection shall not apply to any position the compensation of which is at a rate of \$1,200 per annum or less.

D. In order to attract and retain professional auditors, accountants and staff members in the service of the Auditor of Public Accounts, the Joint Legislative Audit and Review Commission may establish scales of pay for such positions notwithstanding the provisions of this chapter. Such scales when established and certified to the Department of Human Resource Management and the Comptroller shall be applicable in the stead of the scales established under the personnel plan.

E. The Board of Visitors of public institutions of higher education shall establish policies for the designation of administrative and professional faculty positions at institutions of higher education. Those designations shall be reserved for positions that require a high level of administrative independence, responsibility, and oversight within the organization or specialized expertise within a given field as defined by the Board of Visitors. The authority under this subsection to establish policies for the designation of administrative and professional faculty positions shall be granted only to those institutions that meet the conditions prescribed in subsection B of § 23-38.88.

CHAPTER 50.1.

MANAGEMENT STANDARDS.

§ 2.2-5004. *Financial and administrative management standards for public institutions of higher education.*

For purposes of this chapter:

"Public institution of higher education" means the same as that term is defined in § 23-38.89.

A. *Every public institution of higher education in the Commonwealth shall take all appropriate*

actions to meet the following financial management standards:

1. An unqualified opinion from the Auditor of Public Accounts upon the audit of the public institution's financial statements;

2. No significant audit deficiencies attested to by the Auditor of Public Accounts;

3. Substantial compliance with all financial reporting standards approved by the State Comptroller;

4. Substantial attainment of accounts receivable standards approved by the State Comptroller, including, but not limited to, any standards for outstanding receivables and bad debts; and

5. Substantial attainment of accounts payable standards approved by the State Comptroller including, but not limited to, any standards for accounts payable past due.

B. Any public institution of higher education that does not meet all of the standards in subsection A as determined in a written certification by the Auditor of Public Accounts pursuant to § 30-133.1 shall develop and implement a plan of corrective action for purposes of meeting such standards as soon as practicable. The Chairman of the Board of Visitors or other governing body of the public institution of higher education shall provide a copy of the written plan to the Auditor of Public Accounts and the Secretaries of Education and Finance promptly upon completion of the development of the written plan.

C. In addition, any public institution of higher education that does not meet all administrative management standards currently in effect for such institutions as determined in a written certification by the Auditor of Public Accounts pursuant to § 30-133.1 shall develop and implement a plan of corrective action for purposes of meeting such standards as soon as practical. Copies of the plan shall be provided to the same persons included under subsection B upon completion of the development of the written plan.

§ 2.2-5005. Incentive performance benefits to certain public institutions of higher education.

Beginning with the Commonwealth's 2006-2007 fiscal year, each public institution of higher education that (i) has been certified during the fiscal year by the State Council of Higher Education of Virginia pursuant to § 23-9.6:1.01 as having met all of the institutional performance benchmarks for public institutions of higher education and (ii) meets the conditions prescribed in subsection B of § 23-38.88, shall receive the following financial benefits:

1. Interest shall be paid on the tuition and fees and other nongeneral fund Educational and General Revenues deposited into the State Treasury by the public institution of higher education. The interest shall be credited by August 15 of the fiscal year immediately following the fiscal year of certification.

The interest shall be paid from the general fund and shall be an appropriate and equitable amount as determined and certified in writing by the Secretary of Finance to the Comptroller by June 1 of the fiscal year of certification;

2. Any unexpended appropriations of the public institution of higher education at the close of the fiscal year shall be reappropriated and allotted for expenditure by the institution in the immediately following fiscal year; and

3. The public institution of higher education shall be paid a pro rata amount of the total rebate due to the Commonwealth on credit card purchases of \$5,000 or less made during the fiscal year. The amount to be paid to each institution shall equal a pro rata share based upon its total transactions of \$5,000 or less using the credit card that is approved for use by all state agencies as compared to all transactions of \$5,000 or less using such card by all state agencies. The Comptroller shall determine the public institution's pro rata share and shall credit the account of the institution by August 15 of the fiscal year immediately following the year of certification.

The payment to an institution of its pro rata share under this subdivision shall also be applicable to other rebate or refund programs in effect that are similar to that of the credit card rebate program described in this subdivision. The Secretary of Finance shall identify such other rebate or refund programs and shall determine the pro rata share to be paid to the public institution of higher education.

§ 23-9.2:3.02. Six-year institutional plans; annual assessment by State Council.

A. The governing boards of the public institutions of higher education shall develop and adopt biennially a six-year plan for the relevant institution. Each governing board shall submit the plan to the State Council, the Governor, and the respective chairs of the House Committee on Appropriations and the Senate Committee on Finance no later than October 1 of each odd-numbered year.

B. Each plan shall address the institution's academic, financial, and enrollment plans (to include the proportion of in-state and out-of-state students) for the six-year period. The plans shall be structured in accordance with the goals and objectives included subsection B of § 23-38.88.

C. Such plans shall include financial planning reflecting the level of resources anticipated from the general fund assuming (i) no increase in general fund support for the subsequent biennial budget cycles and (ii) incremental general fund support based upon a general fund share for costs for all in-state students as set forth in the current biennial budget. The plan shall also include the anticipated tuition and fee charges required by (a) degree level and (b) domiciliary status to generate sufficient nongeneral fund revenues, as well as the institution's strategies for providing sufficient financial aid to mitigate the

429 *impact of tuition and fee increases on students and their families. The plan shall further include the*
430 *quantification of cost savings realized as a result of the additional operational flexibility provided*
431 *pursuant subsection A of § 23-38.88 and Subchapter 3 (§ 23-38.91 et seq.) of Chapter 4.10 of this title.*

432 *The plans shall be based upon assumptions for achieving adequate base funding as prescribed by the*
433 *State Council and shall be aligned with six-year enrollment projections.*

434 *D. The State Council shall annually review and assess the six-year institutional plans required by*
435 *this section to determine the degree to which the Commonwealth's system of public higher education is*
436 *meeting statewide educational needs and objectives, as identified in subsection B of § 23-38.88. The*
437 *State Council shall identify any disparities between such institutional plans and such statewide needs*
438 *and objectives and shall make recommendations for the revision of such plans for consideration by the*
439 *respective public institutions, the Governor, and the General Assembly.*

440 § 23-9.6:1. Duties of Council generally.

441 In addition to such other duties as may be prescribed elsewhere, the State Council of Higher
442 Education shall have the duty, responsibility and authority:

443 1. ~~To prepare plans under which the several state-supported institutions of higher education of~~
444 ~~Virginia shall constitute a coordinating system. In developing such plans, the Council shall consider~~

445 *Develop a statewide strategic plan that reflects the goals set forth in subsection B of § 23-38.88 for*
446 *higher education in the Commonwealth, identifies a coordinated approach to such state and regional*
447 *goals, and emphasizes the future needs for higher education in Virginia at both the undergraduate and*
448 *the graduate levels, as well as the mission, programs, facilities and location of each of the existing*
449 *institutions of higher education, each public institution's six-year plan, and such other matters as the*
450 *Council deems appropriate. The Council shall revise such plans at least once every four six years and*
451 *shall submit such recommendations as are necessary for the implementation of the plan to the Governor*
452 *and the General Assembly.*

453 2. ~~To review~~ *Review* and approve or disapprove any proposed change in the statement of mission of
454 any presently existing public institution of higher education and to define the mission of all public
455 institutions of higher education created after the effective date of this provision. The Council shall,
456 within the time prescribed in subdivision 1, make a report to the Governor and the General Assembly
457 with respect to its actions hereunder. No such actions shall become effective until 30 days after
458 adjournment of the session of the General Assembly next following the filing of such a report. Nothing
459 contained in this provision shall be construed to authorize the Council to modify any mission statement
460 adopted by the General Assembly, nor to empower the Council to affect, either directly or indirectly, the
461 selection of faculty or the standards and criteria for admission of any public institution, whether related
462 to academic standards, residence or other criteria; it being the intention of this section that faculty
463 selection and student admission policies shall remain a function of the individual institutions.

464 3. ~~To study~~ *Study* any proposed escalation of any public institution to a degree-granting level higher
465 than that level to which it is presently restricted and to submit a report and recommendation to the
466 Governor and the General Assembly relating to the proposal. The study shall include the need for and
467 benefits or detriments to be derived from the escalation. No such institution shall implement any such
468 proposed escalation until the Council's report and recommendation have been submitted to the General
469 Assembly and the General Assembly approves the institution's proposal.

470 4. ~~To review~~ *Review* and approve or disapprove all enrollment projections proposed by each public
471 institution of higher education. The Council's projections shall be in numerical terms by level of
472 enrollment and shall be used for budgetary and fiscal planning purposes only. The Council shall develop
473 estimates of the number of degrees to be awarded by each institution and include those estimates in its
474 reports of enrollment projections. The student admissions policies for the institutions and their specific
475 programs shall remain the sole responsibility of the individual boards of visitors.

476 5. ~~To review~~ *Review* and approve or disapprove all new academic programs which any public
477 institution of higher education proposes. As used herein, "academic programs" include both
478 undergraduate and graduate programs.

479 6. ~~To review~~ *Review* and require the discontinuance of any undergraduate or graduate academic
480 program that is presently offered by any public institution of higher education when the Council
481 determines that such academic program is (i) nonproductive in terms of the number of degrees granted,
482 the number of students served by the program, the program's effectiveness, and budgetary considerations,
483 or (ii) supported by state funds and is unnecessarily duplicative of academic programs offered at other
484 public institutions of higher education in the Commonwealth. The Council shall make a report to the
485 Governor and the General Assembly with respect to the discontinuance of any such academic program.
486 No such discontinuance shall become effective until 30 days after the adjournment of the session of the
487 General Assembly next following the filing of such report.

488 7. ~~To review~~ *Review* and approve or disapprove the creation and establishment of any department,
489 school, college, branch, division or extension of any public institution of higher education that such
490 institution proposes to create and establish. This duty and responsibility shall be applicable to the

proposed creation and establishment of departments, schools, colleges, branches, divisions and extensions, whether located on or off the main campus of the institution in question. If any organizational change is determined by the Council to be proposed solely for the purpose of internal management and the institution's curricular offerings remain constant, the Council shall approve the proposed change. Nothing in this provision shall be construed to authorize the Council to disapprove the creation and establishment of any department, school, college, branch, division or extension of any institution that has been created and established by the General Assembly.

8. ~~To review~~ *Review* the proposed closure of any academic program in a high demand or critical shortage area, as defined by the Council, by any public institution of higher education and assist in the development of an orderly closure plan, when needed.

9. ~~To develop~~ *Develop* a uniform, comprehensive data information system designed to gather all information necessary to the performance of the Council's duties. The system shall include information on admissions, enrollments, self-identified students with documented disabilities, personnel, programs, financing, space inventory, facilities and such other areas as the Council deems appropriate.

10. ~~To develop~~ *Develop* in cooperation with institutions of higher education guidelines for the assessment of student achievement. An institution shall use an approved program that complies with the guidelines of the Council and is consistent with the institution's mission and educational objectives in the development of such assessment. The Council shall report the institutions' assessments of student achievement in the biennial revisions to the state's master plan for higher education.

11. ~~To develop~~ *Develop* in cooperation with the appropriate state financial and accounting officials and to establish uniform standards and systems of accounting, record keeping and statistical reporting for the public institutions of higher education.

12. ~~To review~~ *Review* biennially and approve or disapprove all changes in the inventory of educational and general space that any public institution of higher education may propose, and to make a report to the Governor and the General Assembly with respect thereto. No such change shall be made until 30 days after the adjournment of the session of the General Assembly next following the filing of such report.

13. ~~To visit~~ *Visit* and study the operations of each of the public institutions of higher education at such times as the Council shall deem appropriate and to conduct such other studies in the field of higher education as the Council deems appropriate or as may be requested by the Governor or the General Assembly.

14. ~~To provide~~ *Provide* advisory services to private, accredited and nonprofit institutions of higher education, whose primary purpose is to provide collegiate or graduate education and not to provide religious training or theological education, on academic, administrative, financial and space utilization matters. The Council may also review and advise on joint activities, including contracts for services between such public and private institutions of higher education or between such private institutions and any agency of the Commonwealth or political subdivision thereof.

15. ~~To adopt~~ *Adopt* such rules and regulations as the Council believes necessary to implement all of the Council's duties and responsibilities as set forth in this Code. The various public institutions of higher education shall comply with such rules and regulations.

16. ~~To issue~~ *Issue* guidelines consistent with the provisions of the federal Family Education Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g requiring public institutions of higher education to release a student's academic and disciplinary record to a student's parent.

17. ~~To develop~~ *Develop* and revise, as it deems necessary, in consultation with the Coordinator of Emergency Management, a model institutional crisis and emergency management plan for the purpose of assisting public and private two-year and four-year institutions of higher education in establishing, operating, and maintaining emergency services and disaster preparedness activities.

18. ~~To require~~ *Require* that each institution of higher education formed, chartered, or established in the Commonwealth after July 1, 1980, shall ensure the preservation of student transcripts in the event of institutional closure or revocation of approval to operate in the Commonwealth of Virginia. An institution may provide for the preservation of student transcripts by binding agreement with another institution of higher education with which it is not corporately connected or in such other way as the Council may authorize by regulation. In the event an institution closes, or has its approval to operate in the Commonwealth revoked, the Council, through its Director, may take such action as is necessary to secure and preserve the student transcripts until such time as an appropriate institution accepts all or some of the transcripts. Nothing in this section shall be deemed to interfere with the right of a student to his own transcripts; nor shall this section authorize disclosure of student records except as may otherwise be authorized by law.

19. ~~To develop~~ *Develop*, in cooperation with the institutions of higher education, the Board of Nursing, and the Advisory Council on the Future of Nursing in Virginia, a strategic statewide plan to ensure an adequate supply of nurses. The Council shall recommend to the Governor and the General

Assembly such changes in public policy as may be necessary to meet the state's current and future need for essential nursing services.

20. ~~To facilitate~~ *Facilitate* the development of dual admissions and articulation agreements between two- and four-year public and private institutions of higher education in Virginia. Such agreements shall be subject to the admissions requirements of the four-year institutions.

21. *Provide periodic updates of base adequacy funding guidelines adopted by the Joint Subcommittee Studying Higher Education Funding Policies for the various public institutions.*

In carrying out its duties and responsibilities, the Council, insofar as practicable, shall preserve the individuality, traditions and sense of responsibility of the respective institutions. The Council, insofar as practicable, shall seek the assistance and advice of the respective institutions in fulfilling all of its duties and responsibilities.

§ 23-9.6:1.01. *Assessments of institutional performance.*

A. *The State Council shall develop and revise from time to time, in consultation with the respective chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health or their designees, representatives of public institutions of higher education, and such other state officials as may be designated by the Governor, objective measures of institutional performance and institutional performance benchmarks for such objective measures. At a minimum, the State Council shall develop objective measures and institutional performance benchmarks for the goals and objectives set forth in subsection B of § 23-38.88.*

The State Council shall develop the initial objective measures and performance benchmarks for consideration by the Governor and the General Assembly no later than October 1, 2005.

B. *The Governor shall include objective measures of institutional performance and institutional performance benchmarks in the amendments to the budget bill submitted as required by subsection E of § 2.2-1509.*

C. *The State Council shall annually assess the degree to which the individual public institutions have met the institutional performance benchmarks set forth in the appropriation act in effect. Such annual assessment shall be based upon the objective measures and institutional performance benchmarks proposed by the Governor and included in the annual appropriation act.*

No later than June 1 of each year, the State Council shall provide a certified written report of the results of such annual assessment to the Governor and the respective chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health.

Beginning with the Commonwealth's 2006-2007 fiscal year, those institutions that have met the institutional performance benchmarks shall be entitled to the benefits set forth in § 2.2-5005.

CHAPTER 4.10.

RESTRUCTURED HIGHER EDUCATION FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT.

SUBCHAPTER 1.

GENERAL PROVISIONS.

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

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

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

2. *For those public institutions of higher education that have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act, as provided in subsection C of § 2.2-1132, to enter into contracts for specific construction projects without the review and approval of the Bureau of Capital Outlay Management, provided such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.);*

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

4. *To acquire an operating or capital lease, provided that the capital lease does not impact the Commonwealth's debt capacity, as provided in subdivision 5 of § 2.2-1149;*

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

6. *To sell surplus property valued at less than \$5 million that is possessed and controlled by the institution and to retain a portion of the proceeds from the sale of such property as provided in subdivision C 2 of § 2.2-1153;*

7. *For purposes of compliance with § 2.2-4310, to procure goods, services, and construction from a vendor that the institution has identified as a minority business enterprise as provided in § 2.2-1404.1;*

8. *To be exempt from reporting data processing or other related projects to the CIO as provided in subdivision A 4 of § 2.2-2007;*

9. *To be allowed to establish policies for the designation of administrative and professional faculty positions at the institution as provided in subsection E of § 2.2-2901;*

10. To receive the financial benefits described under § 2.2-5005 and under the conditions of such section;

11. To have the authority to contract with a building official of the locality in which construction for the institution is taking place for such official to perform, on behalf of the Department of General Services, any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) pursuant to subsection B of § 36-98.1;

12. For sole source procurements made by the institution in accordance with subsection E of § 2.2-4303, to be exempt from any transaction fees for using a vendor who is not registered with the Department of General Services' web-based electronic procurement program commonly known as "eVA";

13. To be exempt from reporting its purchases to the Secretary of Education and from any review of its purchases by the Secretary; and

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

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

B. In order to be eligible for the restructured financial and operational authority set forth in subdivisions A 1 through A 13 of § 23-38.88, the Board of Visitors of a public institution of higher education shall commit to the Governor and the General Assembly by August 1, 2005, through formal resolution adopted according to its own bylaws, to meeting the state goals specified below, and shall be responsible for ensuring that such goals are met, in addition to such other responsibilities as may be prescribed by law. Each such institution shall commit to the Governor and the General Assembly to:

1. Consistent with its institutional mission, provide access to higher education for all citizens throughout the Commonwealth, including underrepresented populations, and, consistent with subdivision 4 of § 23-9.6:1 and in accordance with anticipated demand analysis, meet enrollment projections and degree estimates as agreed upon with the State Council of Higher Education for Virginia;

2. Consistent with § 23-9.2:3.02, ensure that higher education remains affordable, regardless of individual or family income, and through a periodic assessment, determine the impact of tuition and fee levels net of financial aid on applications, enrollment, and student indebtedness incurred for the payment of tuition and fees;

3. Offer a broad range of undergraduate and, where appropriate, graduate programs consistent with its mission, as approved by the State Council of Higher Education for Virginia;

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

5. Ensure that students progress from initial enrollment to a timely graduation within the prescribed credit hours of the degree program, and that the number of degrees conferred increases over time;

6. Consistent with the institution's mission, develop articulation agreements that have uniform application to all Virginia community colleges and meet appropriate general education and program requirements at the four-year institution, and provide additional opportunities for associate degree graduates to be admitted and enrolled;

7. Actively contribute to efforts to stimulate the economic development of the Commonwealth and the area in which the institution is located. Such objective shall include, but shall not be limited to, (i) assessing regularly the extent to which the institution's curricula and degree programs address the Commonwealth's need for sufficient graduates in particular shortage areas, including specific academic disciplines, professions, and geographic regions as identified by the Virginia Employment Commission and the State Council of Higher Education; and (ii) where appropriate, increasing the level of externally funded research conducted at the institution;

8. Work actively and cooperatively with elementary and secondary school administrators, teachers, and students in those public schools and school divisions that have not achieved full accreditation pursuant to the Standards of Accreditation required by Chapter 13.2 (§ 22.1-253.13:1 et seq.) of Title 22.1 to improve student achievement, upgrade the knowledge and skills of teachers, and strengthen leadership skills of school administrators;

9. Prepare a six-year financial plan consistent with § 23-9.2:3.02; and

10. Conduct the institution's business affairs in a manner that maximizes operational efficiency, contributes to economies for state government as a whole, and meets the financial and administrative management standards currently in effect for public institutions of higher education pursuant to § 2.2-5004 and as may be included in the appropriation act that is in effect.

Upon making such commitments to the Governor and the General Assembly by August 1, 2005, the public institution of higher education shall be allowed to exercise the restructured financial and operational authority set forth in subdivisions A 1 through A 13 of § 23-38.88, subject to such conditions as may be provided under the enabling statutes granting the additional authority.

675 C. As provided in subsection C of § 23-9.6:1.01, the State Council of Higher Education shall in
676 consultation with the respective chairmen of the House Committees on Education and Appropriations
677 and the Senate Committees on Finance and Education and Health or their designees, representatives of
678 public institutions of higher education, and such other state officials as may be designated by the
679 Governor, develop objective measures of institutional performance and institutional performance
680 benchmarks for such objective measures. At a minimum, the State Council shall develop objective
681 measures and institutional performance benchmarks for the goals and objectives set forth in subsection
682 B.

683 As provided in subsection C of § 23-9.6:1.01, beginning with the 2006-2007 fiscal year, any public
684 institution of higher education that has been certified during the fiscal year by the State Council of
685 Higher Education for Virginia as meeting all such institutional performance benchmarks shall be
686 provided the financial benefits under § 2.2-5005.

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

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

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

699 a. (i). Within the last five years of the date that the initial agreement is entered into, the institution
700 has received an affirmed bond rating of at least AA- (i.e., AA minus) or its equivalent from (a) Moody's
701 Investors Service, Inc., (b) Standard & Poor's, Inc., or (c) Fitch Investor's Services, Inc. or (ii) the
702 institution has (a) participated in decentralization pilot programs in the areas of finance and capital
703 outlay, (b) demonstrated management competency in those two areas as evidenced by a written
704 certification from the Cabinet Secretary or Secretaries designated by the Governor, (c) received
705 additional operational authority under a memorandum of understanding pursuant to § 23-38.90 in at
706 least one functional area, and (d) demonstrated management competency in that area for a period of at
707 least two years. In submitting "The Budget Bill" for calendar year 2005 pursuant to subsection A of
708 § 2.2-1509, the Governor shall include criteria for determining whether or not an institution has
709 demonstrated the management competency required by clause (ii) of this subdivision;

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

714 c. The institution agrees to reimburse the Commonwealth for any additional costs incurred or
715 monetary benefits lost by the Commonwealth that are attributable to the institution's exercise of any
716 restructured financial or operational authority set forth in Subchapter 3 (§ 23-38.91 et seq.) of this
717 chapter. The institution's agreement to reimburse the Commonwealth for such additional costs and lost
718 benefits shall be expressly included in each management agreement with the institution.

719 In developing management agreements, public institutions of higher education shall give
720 consideration to potential future impacts of tuition increases on the Virginia College Savings Plan
721 (§ 23-38.75) and shall discuss such potential impacts with parties participating in development of such
722 agreements. The executive director of the Virginia College Savings Plan shall provide to the institution
723 and such parties its assumptions underlying the contract pricing of the program.

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

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

734 The Joint Legislative Audit and Review Commission, in cooperation with the Auditor of Public
735 Accounts, shall conduct a review relating to the initial management agreement with each public
736 institution of higher education. The review shall cover a period of at least the first 24 months from the

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

4. The right and power by the Governor to void a management agreement shall be expressly included in each management agreement. The management agreement shall provide that the Governor may void a management agreement with a public institution of higher education if the Governor makes a written determination that the institution is not in substantial compliance with the terms of the agreement or the requirements of this chapter in general. A copy of the written determination shall be provided to the chairman of the Board of Visitors or other governing body of the public institution of higher education and to the members of the General Assembly. Upon the Governor voiding a management agreement, the affected public institution of higher education shall not be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 (§ 23-38.91 et seq.) unless and until the institution enters into a subsequent management agreement with the Secretary or Secretaries designated by the Governor.

5. A management agreement with a public institution of higher education shall not grant any of the restructured financial or operational authority set forth in Subchapter 3 (§ 23-38.91 et seq.) of this chapter to an affiliated entity of the institution unless such intent, as well as the degree of the restructured financial or operation authority to be granted to the affiliated entity, is expressly included in the management agreement.

6. Following the execution and submission of a management agreement with a public institution of higher education and submission of that management agreement to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health pursuant to § 23-38.97, the Governor shall include a recommendation for approval of each management agreement with that institution in "The Budget Bill" submitted pursuant to subsection A of § 2.2-1509 or in his gubernatorial amendments submitted pursuant to subsection E of § 2.2-1509. If such recommendation is adopted as part of the general appropriation act, the initial management agreement shall become effective on the effective date of such general appropriation act. However, no management agreement shall be entered into by a public institution of higher education and the Secretary or Secretaries designated by the Governor on or after November 15 of a calendar year.

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

§ 23-38.89. Definitions.

As used in this chapter, the following terms have the following meanings, unless the context requires otherwise:

"Bonds, notes or other obligations" means bonds, notes, commercial paper, bond anticipation notes, revenue certificates, capital leases, lease participation certificates or other evidences of indebtedness or deferred purchase financing arrangements.

"Capital project" means the acquisition of any interest in land, including improvements on the acquired land, new construction of 5,000 square feet or more, new construction costing \$1 million or more, improvements or renovations costing \$1 million or more, or capital leases.

"Covered Employee" means any person who is employed by a covered institution on either a salaried or wage basis.

"Covered institution" means, on and after its Management Agreement Effective Date, a public institution of higher education of the Commonwealth that has entered into a management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 (§ 23-38.91 et seq.) of this chapter.

"Enabling legislation" means those chapters, other than this chapter, of Title 23, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions of the individual public institutions of higher education of the Commonwealth, and as provided in §§ 2.2-2817.2, 2.2-2905, 51.1-126.3, and 51.1-1100 in the case of the University of Virginia Medical Center, unless

798 otherwise expressly provided in this subchapter.

799 "Facilities" means all property or rights in property, real and personal, tangible and intangible,
800 including but not limited to all facilities and infrastructures suitable for supporting a covered institution's
801 mission and ancillary activities and including any and all structures, buildings, improvements, additions,
802 extensions, replacements, appurtenances, lands, rights in land, furnishings, landscaping, approaches,
803 roadways, and other related and supporting facilities, now or hereafter held, possessed, owned, leased,
804 operated, or used, in whole or in part, by a covered institution.

805 "Management agreement" means an agreement required by subsection D of § 23-38.88 between the
806 Commonwealth and a public institution of higher education seeking to become governed by Subchapter
807 3 (§ 23-38.91 et seq.) of this chapter.

808 "Management Agreement Effective Date" means, except as provided in subdivision D 6 of § 23-38.88,
809 July 1 of the calendar year following the calendar year in which a management agreement is entered
810 into between the Commonwealth and a public institution of higher education.

811 "Project" means any research programs and any research or educational facility of an institution
812 governed by Subchapter 3 (§ 23-38.91 et seq.) of this chapter or equipment necessary or convenient to
813 or consistent with the purposes of such institution, whether or not owned by the institution, including,
814 without limitation, research, training, teaching, dormitory, and classroom facilities; all related and
815 supporting facilities, and equipment necessary or desirable in connection therewith or incidental thereto;
816 or equipment alone; and also including, without limitation, office, parking, kitchen, laundry, laboratory,
817 wellness, pharmaceutical, administrative, communications, computer, and recreational and athletic
818 facilities; hotels and related facilities; power plants and equipment; storage space; hospitals; nursing
819 homes; continuing care facilities; self-care facilities; health maintenance centers; medical office
820 facilities; clinics; outpatient clinics; surgical centers; alcohol, substance abuse, and drug treatment
821 centers; laboratories; sanitariums; hospices; facilities for the residence or care of the elderly, the
822 handicapped, or the chronically ill; residential facilities for nurses, interns, and physicians; other kinds
823 of facilities for the treatment of sick, disturbed, or infirm persons or the prevention of disease or
824 maintenance of health; colleges, schools, or divisions offering undergraduate, graduate, professional, or
825 extension programs, or any combination of such programs, for such branches of learning as may be
826 appropriate; vehicles and other transportation equipment, together with mobile medical facilities; air
827 transport equipment, including equipment necessary or desirable for the transportation of medical
828 equipment, medical personnel or patients; and all lands, buildings, improvements, approaches, and
829 appurtenances necessary or desirable in connection with or incidental to any such program, facility or
830 equipment.

831 "Public institution of higher education" means a two-year or four-year public institution of higher
832 education.

833 "Virginia Retirement System" means that retirement system, or other authorized retirement system,
834 established pursuant to Title 51.1.

835 SUBCHAPTER 2.

836 FINANCIAL AND ADMINISTRATIVE MEMORANDA OF UNDERSTANDING.

837 § 23-38.90. Memoranda of understanding.

838 A. 1. The Governor shall recommend to the General Assembly operational areas in addition to
839 decentralization programs in finance and capital outlay established as of June 30, 2005, under which
840 public institutions of higher education may seek to enter into a memorandum of understanding with the
841 Commonwealth. In submitting "The Budget Bill" for calendar year 2005 pursuant to subsection A of
842 § 2.2-1509, the Governor shall include eligibility criteria for each operational area along with the
843 functional authority that could be granted in each area. In each operational area, the functional
844 authority granted through a memorandum of understanding shall not exceed the level of autonomy
845 permitted under Subchapter 3 (§ 23-38.91 et seq.) of this chapter.

846 2. Effective July 1, 2006, any public institution of higher education may enter into a memorandum of
847 understanding with the appropriate Cabinet Secretary or Secretaries, as designated by the Governor, for
848 additional operational authority in any operational area or areas adopted by the General Assembly in
849 accordance with subdivision A 1 provided that the authority granted in the memorandum of
850 understanding is consistent with that institution's ability to manage its operations in the particular area
851 or areas.

852 B. Within 15 days of receipt of a request from a public institution of higher education to enter into a
853 memorandum of understanding pursuant to subsection A, the Cabinet Secretary or Secretaries receiving
854 that request shall notify the Chairmen of the House Committee on Appropriations and the Senate
855 Committee on Finance of the request. The Cabinet Secretary or Secretaries shall determine within 90
856 calendar days whether or not to enter into the requested memorandum of understanding, or some
857 variation thereof. If the determination is to enter into a memorandum of understanding with the
858 institution, the Cabinet Secretary or Secretaries shall forward a copy of the memorandum of
859 understanding to the Chairmen of the House Committee on Appropriations and the Senate Committee on

Finance. If the determination is not to enter into a memorandum of understanding with the institution, the Cabinet Secretary or Secretaries shall notify the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance of the reasons for denying the institution's request. If an institution's request is denied, nothing in this subsection shall prohibit the institution from submitting a future request to enter into a memorandum of understanding pursuant to subsection A of this section.

SUBCHAPTER 3.

ALTERNATIVE AUTHORITY FOR COVERED INSTITUTIONS.

Article 1.

Governance; Scope of Subchapter; Other Laws.

§ 23-38.91. Responsibility and accountability for management of institution; governance.

A. The Board of Visitors and administration of a public university or college of the Commonwealth that meets the requirements of this subchapter to demonstrate the ability to manage successfully the administrative and financial operations of the institution without jeopardizing the financial integrity and stability of the institution may enter into negotiation with the Governor to develop a management agreement with the Commonwealth, as provided in this subchapter. Consistent with the terms of the management agreement, the Board of Visitors shall assume full responsibility for management of the institution, subject to the requirements and conditions set forth in this subchapter, the general requirements for management agreements as provided in § 23-38.88, and the specific management agreement with the Commonwealth. The Board of Visitors shall be fully accountable for (i) the management of the institution of higher education as provided in this subchapter, (ii) meeting the requirements of §§ 2.2-5004, 23-9.2:3.02, and 23-9.6:1.01, and (iii) meeting such other provisions as may be set forth in the management agreement with the Commonwealth.

B. Each covered institution shall be governed and administered in the manner provided in this subchapter but subject to the expressed terms of the management agreement entered into pursuant to § 23-38.88, in the appropriation act, and in each such institution's enabling legislation.

§ 23-38.92. Scope of subchapter.

A. Any public institution of higher education that complies with the requirements of this subchapter shall thereafter have the powers and authority set forth in this subchapter that are expressly included in the management agreement described in § 23-38.88.

B. Except as specifically made inapplicable under this subchapter and the express terms of a management agreement described in § 23-38.88, the provisions of Title 2.2 relating generally to the operation, management, supervision, regulation, and control of public institutions of higher education shall be applicable to covered institutions as provided by the express terms of the management agreement described in § 23-38.88.

C. In the event of a conflict between any provision of Title 2.2 and any provision of this subchapter as expressed by the management agreement, the provisions of the management agreement shall control. In the event of a conflict between any provision of this subchapter and an institution's enabling legislation, the enabling legislation shall control.

§ 23-38.93. Educational policies of the Commonwealth; other requirements.

A. For purposes of §§ 2.2-5004, 23-1.01, 23-1.1, 23-2, 23-2.1, 23-2.1:1, 23-3, 23-4.2, 23-4.3, 23-4.4, 23-7.1:02, 23-7.4, 23-7.4:1, 23-7.4:2, 23-7.4:3, 23-7.5, 23-8.2:1, 23-9.1, 23-9.2, 23-9.2:3, 23-9.2:3.02, 23-9.2:3.1 through 23-9.2:5, 23-9.6:1.01, and Chapter 4.9 (§ 23-38.75 et seq.), each covered institution shall remain a public institution of higher education of the Commonwealth following its conversion to a covered institution governed by this chapter, and shall retain the authority granted and any obligations required by such provisions. In addition, each covered institution shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ 23-9.3 et seq.); Chapter 3 (§ 23-14 et seq.); Chapter 3.2 (§ 23-30.23 et seq.); Chapter 3.3 (§ 23-30.39 et seq.); Chapter 4 (§ 23-31 et seq.); Chapter 4.01 (§ 23-38.10:2 et seq.); Chapter 4.1 (§ 23-38.11 et seq.); Chapter 4.4 (§ 23-38.45 et seq.); Chapter 4.4:1 (§ 23-38.53:1 et seq.); Chapter 4.4:2 (§ 23-38.53:4 et seq.); Chapter 4.4:3 (§ 23-38.53:11); Chapter 4.4:4 (§ 23-38.53:12 et seq.); Chapter 4.5 (§ 23-38.54 et seq.); Chapter 4.7 (§ 23-38.70 et seq.); Chapter 4.8 (§ 23-38.72 et seq.); and Chapter 4.9 (§ 23-38.75 et seq.).

B. State government-owned or operated and state-owned teaching hospitals that are a part of a covered institution as of the institution's Management Agreement Effective Date shall continue to be characterized as state government-owned or operated and state-owned teaching hospitals for purposes of payments under the State Plan for Medicaid Services adopted pursuant to § 32.1-325 et seq., provided that the covered institution commits to serve indigent and medically indigent patients, in which event the Commonwealth, through the Department of Medical Assistance Services, shall, subject to the appropriation in the appropriation act in effect, continue to reimburse the full cost of the provision of care, treatment, health-related and educational services to indigent and medically indigent patients and

921 *continue to treat hospitals that were part of a covered institution and that were Type One Hospitals*
922 *prior to the institution's Management Agreement Effective Date as Type One Hospitals for purposes of*
923 *such reimbursement.*

924 *§ 23-38.94. Audits.*

925 *The Auditor of Public Accounts or his legally authorized representatives shall audit annually*
926 *accounts of all covered institutions and shall distribute copies of each annual audit to the Governor and*
927 *to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance.*
928 *Pursuant to § 30-133, the Auditor of Public Accounts and his legally authorized representatives shall*
929 *examine annually the accounts and books of each such institution; however, a covered institution shall*
930 *not be deemed to be a state or governmental agency, advisory agency, public body, or agency or*
931 *instrumentality for purposes of Chapter 14 (§ 30-130 et seq.) of Title 30 except for those provisions in*
932 *such chapter that relate to requirements for financial recordkeeping and bookkeeping. Each covered*
933 *institution shall be subject to periodic external review by the Joint Legislative and Audit Review*
934 *Commission and such other reviews and audits as shall be required by law.*

935 *§ 23-38.95. Public access to information.*

936 *A covered institution shall continue to be subject to § 2.2-4342 and to the provisions of the Virginia*
937 *Freedom of Information Act (§ 2.2-3700 et seq.), but shall be entitled to conduct business pursuant to*
938 *§ 2.2-3709, in the case of a public institution of higher education to which that section applies, and, in*
939 *all cases, may conduct business as a "state public body" for purposes of subsection B of § 2.2-3708.*

940 *§ 23-38.96. Conflicts of interests.*

941 *The provisions of the State and Local Government Conflict of Interests Act (§ 2.2-3100 et seq.) that*
942 *are applicable to officers and employees of a state governmental agency shall continue to apply to the*
943 *members of the governing body and the Covered Employees of a covered institution.*

944 *Article 2.*

945 *Eligibility Requirements and Procedures; Management Agreement.*

946 *§ 23-38.97. Eligibility requirements and procedures; management agreement.*

947 *A. Any public institution of higher education may initiate the process to be governed by this*
948 *subchapter by complying with the following requirements:*

949 *1. An absolute two-thirds, or more, of the institution's governing body shall have voted in the*
950 *affirmative for a resolution expressing the sense of the body that the institution is qualified to be, and*
951 *should be, governed by this subchapter.*

952 *2. Following such affirmative vote by such governing body, the institution shall submit to the*
953 *Governor a written request for his approval to be governed by this subchapter. A copy of such request*
954 *shall be sent to the Chairmen of the House Committee on Appropriations, the House Committee on*
955 *Education, the Senate Committee on Finance and the Senate Committee on Education and Health. Such*
956 *written request shall provide documentation substantiating that:(i) the institution possesses the necessary*
957 *administrative infrastructure, experience, and expertise to perform successfully its public educational*
958 *mission as a covered institution; (ii) the institution is financially able to operate as a covered institution*
959 *without jeopardizing the financial integrity and stability of the institution; (iii) the institution consistently*
960 *meets the financial and administrative management standards pursuant to § 2.2-5004; and(iv) the*
961 *institution's governing body has adopted performance and accountability standards, in addition to those*
962 *developed by the State Council of Higher Education pursuant to § 23-9.6:1.01, against which its*
963 *implementation of this additional authority can be measured.*

964 *B. If the Governor finds that the institution meets the criteria set forth in subdivision A 2, he shall*
965 *authorize those Cabinet Secretaries he deems appropriate to enter into a management agreement, as*
966 *described in § 23-38.88, with the governing body of that institution addressing such matters as that*
967 *institution's in-state undergraduate student enrollment, its financial aid requirements and capabilities,*
968 *and its tuition policy for in-state undergraduate students.*

969 *C. Any such management agreement, executed by the designated Cabinet Secretaries and governing*
970 *body of the institution shall be submitted by no later than November 15 of any given year to the House*
971 *Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance,*
972 *and the Senate Committee on Education and Health. The Governor shall include a recommendation for*
973 *approval of the management agreement with the public institution of higher education in "The Budget*
974 *Bill" submitted pursuant to subsection A of § 2.2-1509 or in his gubernatorial amendments submitted*
975 *pursuant to subsection E of § 2.2-1509, and the management agreement shall become effective as*
976 *provided in subdivision D 6 of § 23-38.88 and § 23-38.89.*

977 *§ 23-38.98. Amendments to, and revocation of, management agreement.*

978 *A. Any amendment to a management agreement shall be executed by the covered institution and the*
979 *Cabinet Secretaries deemed appropriate by the Governor, shall be submitted to the House Committee on*
980 *Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate*
981 *Committee on Education and Health no later than 30 days prior to the effective date of such*
982 *amendment, and shall be effective on the effective date of such amendment.*

B. An institution's status as a covered institution may be revoked by an act of the General Assembly (i) if the institution fails to meet the requirements of this subchapter, or (ii) if the institution fails to meet the requirements of the management agreement as provided in § 23-38.88. An institution's status as a covered institution shall terminate upon the Governor voiding the management agreement with the institution as provided under subdivision D 4 of § 23-38.88.

Article 3.

Powers and Authority Generally.

§ 23-38.99. Powers and authority generally.

In addition to those powers granted in each covered institution's enabling legislation and in the appropriation act, a covered institution, subject to the express provisions of the management agreement as provided in § 23-38.88, shall have all the powers and authority necessary or convenient to carry out the purposes and provisions of this subchapter. The powers of the Board of Visitors of the institution shall include:

1. To make and execute contracts, guarantees, or any other instruments and agreements necessary or convenient for the exercise of its powers, authority, and functions including, without limitation, to make and execute contracts with persons to operate and manage any or all of the institution's facilities or operations, and to incur liabilities and secure the obligations of any entity or individual; provided, however, that no covered institution may pledge the faith and credit of the Commonwealth or enter into an indemnification agreement or binding arbitration agreement contrary to the law of Virginia applicable to state agencies.

2. To conduct or engage in any lawful business, activity, effort, or project consistent with the institution's purposes or necessary or convenient to exercise its powers and authority.

3. To procure such insurance, participate in such insurance plans, provide such self-insurance, continue participation in the Commonwealth's insurance or self-insurance plans, continue to participate in the Commonwealth's risk management programs, continue participation in the Virginia Retirement System or other Commonwealth sponsored retirement plans, or any combination of the foregoing, as provided in this subchapter. The purchase of insurance, participation in an insurance plan, or creation of a self-insurance plan by the institution shall not be deemed a waiver or relinquishment of any sovereign immunity to which the institution or its officers, directors, employees, or agents are otherwise entitled. The fact that a covered institution is governed by this subchapter shall not disqualify it from participating in any Commonwealth or Virginia Retirement System insurance, self-insurance, or risk management program on the same terms and conditions applicable to other state agencies and other public institutions of higher education.

§ 23-38.100. Operation of projects.

A. A covered institution may acquire, plan, design, construct, own, rent as landlord or tenant, operate, control, remove, renovate, enlarge, equip, and maintain, directly or through stock or nonstock corporations or other entities, any project as defined in this subchapter. Such projects may be owned or operated by the institution or other persons, or jointly by such institution and other persons, and may be operated within or without the Commonwealth, so long as their operations are necessary or desirable to assist the institution in carrying out its public purposes within the Commonwealth, and so long as any private benefit resulting to any such other private persons from any such project is merely incidental to the public benefit of such project.

B. In the operation of any facility, including any veterinary facility or any hospital or other health care and related facilities owned or operated by a covered institution, such institution may continue in effect or adopt and enforce all policies necessary or desirable for such operation. Any such policies pertaining to the operation of veterinary, hospital, or other health care or related facilities may include, without limitation, rules relating to the conditions under which the privilege of practicing any health profession or veterinary medicine may be available therein, the admission and treatment of patients, the procedures for determining the qualification of patients for indigent care or other programs, and the protection of patients and employees, provided that such policies shall not discriminate on the basis of race, religion, color, sex, national origin, or other factor prohibited by law.

§ 23-38.101. Creation of entities; participation in joint ventures.

A. A covered institution may create or assist in the creation of; may own in whole or in part or otherwise control; may participate in or with any entities, public or private; and may purchase, receive, subscribe for, own, hold, vote, use, employ, sell, mortgage, lend, pledge, or otherwise acquire or dispose of any (i) shares or obligations of, or other interests in, any entities organized for any purpose within or without the Commonwealth, and (ii) obligations of any person or corporation. No part of the assets or net earnings of such institution shall inure to the benefit of, or be distributable to, any private individual, except that reasonable compensation may be paid for services rendered to or for such institution in furtherance of its public purposes, and benefits may be conferred that are in conformity with said purposes.

1044 B. A covered institution may participate in joint ventures with individuals, corporations,
1045 governmental bodies or agencies, partnerships, associations, insurers or other entities to facilitate any
1046 activities or programs consistent with the public purposes and intent of this subchapter.

1047 C. A covered institution may create or continue the existence of one or more nonprofit entities for
1048 the purpose of soliciting, accepting, managing, and administering grants, gifts and bequests, endowment
1049 gifts and bequests, and gifts and bequests in trust.

1050 D. In carrying out any activities authorized by this subchapter, a covered institution may provide
1051 appropriate assistance, including (i) making loans from its funds, other than general fund appropriations
1052 or proceeds of a general obligation bond issue under Article X, Section 9(a) or 9(b) of the Constitution
1053 of Virginia, and (ii) providing the time of its employees to corporations, partnerships, associations, joint
1054 ventures or other entities, whether or not such corporations, partnerships, associations, joint ventures or
1055 other entities are owned or controlled in whole or in part, directly or indirectly, by such institution.

1056 § 23-38.102. Campus police.

1057 A covered institution may continue to operate or establish a campus police department in accordance
1058 with the provisions of Chapter 17 (§ 23-232 et seq.), as those provisions are modified by this
1059 subchapter. Campus police shall possess the powers provided in Chapter 17; provided however, that a
1060 covered institution's employment of campus police shall be governed by the provisions of this subchapter
1061 rather than by Chapter 28 (§ 2.2-2800 et seq.) and Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2.

1062 Article 4.

1063 Institutional Management.

1064 § 23-38.103. Six-Year Plan.

1065 Each covered institution shall develop, and its Board of Visitors shall approve, a six-year plan, to be
1066 updated at least every two years. Such plan shall be consistent with the provisions of § 23-9.2:3.02.

1067 § 23-38.104. Tuition, fees, rentals, and other charges; moneys.

1068 A covered institution may fix, revise from time to time, charge and collect tuition, rates, rentals, fees
1069 and other charges for the services, goods, or facilities furnished by or on behalf of such institution, and
1070 may adopt policies regarding any such service rendered or the use, occupancy, or operation of any such
1071 facility.

1072 § 23-38.105. Financial operations of covered institutions.

1073 A. Subject to such accountability measures and audits as are provided in this subchapter or as may
1074 otherwise be specifically made applicable by other law to institutions governed by this subchapter and
1075 subject to the expressed terms of the management agreement described in § 23-38.88, a covered
1076 institution may be permitted (i) to independently manage its operations and finances, including holding
1077 and investing its tuition, fees, research funds, auxiliary enterprise funds, and all other public funds after
1078 initially being deposited into the state treasury; (ii) to create any and all financial policies deemed
1079 necessary to conduct its financial operations; (iii) to adopt the budget for the institution; and (iv) to
1080 control the expenditures of all moneys generated or received by the institution, including tuition, fees
1081 and other nongeneral fund revenue sources.

1082 B. Subject to the express terms of the management agreement described in § 23-38.88, in managing
1083 its operations and finances, the Board of Visitors of a covered institution shall have sole authority to
1084 establish tuition, fee, room, board, and other charges consistent with sum sufficient appropriation
1085 authority for all nongeneral funds as provided by the Governor and the General Assembly in the
1086 Commonwealth's biennial appropriations authorization. The Board of Visitors shall include the
1087 institution's commitment to meet all remaining financial need above the level that the Commonwealth
1088 has stated as its goal in § 4-5.01 of the appropriations act. In the event that any or all of the
1089 nongeneral funds are retained by the institution, the institution shall invest such funds consistent with an
1090 investment policy established by the Board of Visitors and retain all income earned on such investments.
1091 In the event that any or all of the nongeneral funds are held on behalf of the institution by the
1092 Commonwealth of Virginia, the institution shall receive a share of the income earned by the
1093 Commonwealth on the investment of such funds as provided in § 2.2-5005.

1094 C. A covered institution may enter into any contract which the institution determines to be necessary
1095 or appropriate to place any bond or investment of the institution, in whole or in part, on the interest
1096 rate, cash flow, or other basis desired by the institution, which contract may include, without limitation,
1097 contracts commonly known as interest rate swap agreements, and futures or contracts providing for
1098 payments based on levels of, or changes in, interest rates. These contracts or arrangements may be
1099 entered into by the institution in connection with, incidental to, entering into, or maintaining any (i)
1100 agreement that secures bonds, notes, or other obligations or (ii) investment or contract providing for
1101 investment, otherwise authorized by law, including but not limited to § 23-38.106. These contracts and
1102 arrangements may contain such payment, security, default, remedy, and other terms and conditions as
1103 determined by the institution, after giving due consideration to the creditworthiness of the counterpart or
1104 other obligated party, including any rating by any nationally recognized rating agency, and any other
1105 criteria as may be appropriate. Any money set aside and pledged to secure payments of bonds, notes or

other obligations or any of the contracts entered into pursuant to this section may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section.

§ 23-38.106. Investments of operating funds.

A covered institution may invest its operating funds in any obligations or securities that are considered legal investments for public funds in accordance with Chapter 45 (§ 2.2-4500 et seq.) of Title 2.2. Such institution's governing body shall adopt written investment guidelines which provide that such investments shall be made solely in the interest of the covered institution and shall be undertaken with the care, skill, prudence, and diligence under the circumstances then prevailing that a prudent person acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims.

§ 23-38.107. Records of financial transactions.

The governing body of a covered institution shall adopt a system of independent financial management that includes bookkeeping and accounting procedures that have been prescribed for governmental organizations by the Government Accounting Standards Board.

§ 23-38.108. Financing and indebtedness.

A covered institution shall have the authority to:

1. Borrow money and issue bonds, notes, or other obligations as provided in this subchapter and to purchase such bonds, notes or other obligations;

2. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments with, the Virginia Public Building Authority and the Virginia College Building Authority, which authorities are authorized to borrow money and make and issue negotiable notes, bonds, notes or other obligations and other evidences of indebtedness to provide such financing relating to facilities or any project; and

3. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments with the Commonwealth as otherwise provided by law relating to the institution's facilities or any project.

§ 23-38.109. Power to issue bonds, notes or other obligations.

A. Notwithstanding the provisions of § 23-29, which shall be inapplicable to the exercise by a covered institution of the authority granted in this article, a covered institution may issue bonds, notes, or other obligations from time to time for any purpose that is consistent with its institutional mission, including, without limitation, to finance or refinance any project, to appropriately manage operational cash flows, to provide for short term financing, to refund bonds, notes or other obligations issued therefore by or on behalf of such institution, or otherwise, including bonds, notes, or other obligations or obligations not then subject to redemption, and may guarantee, assume or otherwise agree to pay, in whole or in part, indebtedness issued by such institution or any other party for managing operational cash flows or resulting in the acquisition or construction of facilities for the benefit of such institution, or the refinancing thereof; provided, however, that nothing in this subchapter shall preclude a covered institution from participation in any financing program or bond issue established and implemented by the Commonwealth, or any agency thereof, including, without limitation, any financing program or bond issue under Article X, Section 9(b) or 9(c) of the Constitution of Virginia, or any financing program or bond issue under Article X Section 9(d) of the Constitution of Virginia undertaken by the Treasury Board, the Virginia College Building Authority or the Virginia Public Building Authority, if such institution is otherwise eligible for and approved for such participation and is otherwise able to fulfill any requirements that may be imposed upon it in relation to such participation.

B. Notwithstanding Article 8 (§ 2.2-2415 et seq.) of Chapter 24 of Title 2.2, Chapter 3 (§ 23-14 et seq.) of Title 23, and § 23-65, covered institutions may issue bonds, notes, or other obligations without obtaining the consent of any legislative body, elected official, commission, board, bureau, or agency of the Commonwealth or of any political subdivision, and without any proceedings or conditions other than those specifically required by this subchapter. Bonds, notes, or other obligations may be issued for the benefit of covered institutions without the approval required by the provisions of Article 8 (§ 2.2-2415 et seq.) of Chapter 24 of Title 2.2. No bonds, notes, or other obligations issued under the authority of this article shall be subject to any review or approval procedure, rules, regulations, or procedures adopted pursuant to Chapter 3 (§ 23-14 et seq.) of Title 23.

C. A covered institution may issue such types of bonds, notes, or other obligations as it may determine are appropriate, including, without limitation, bonds, notes or other obligations payable as to principal and interest from any one or more of the following sources: (i) its revenues generally; (ii) income and revenues derived from the operation, sale, or lease of a particular project or projects, whether or not they are financed or refinanced from the proceeds of such bonds, notes, or other obligations; (iii) funds realized from the enforcement of security interests or other liens or obligations securing such bonds, notes, or other obligations; (iv) proceeds from the sale of bonds, notes, or other obligations; (v) payments under letters of credit, policies of municipal bond insurance, guarantees, or

1167 other credit enhancements; (vi) any reserve or sinking funds created to secure such payment; (vii)
1168 accounts receivable of such institution; or (viii) other available funds of such institution.

1169 D. Any bonds, notes, or other obligations may be additionally guaranteed by, or secured by a pledge
1170 of, any grant, contribution, or appropriation from a participating political subdivision, the covered
1171 institution, the Commonwealth or any political subdivision, agency, or instrumentality thereof, any
1172 federal agency or any unit, private corporation, partnership, association, or individual.

1173 E. Bonds, notes, or other obligations of a covered institution are declared to be for an essential
1174 public and governmental purpose.

1175 F. It shall be lawful for any bank or trust company within or without the Commonwealth to serve as
1176 depository of the proceeds of bonds, notes, or other obligations or of other revenues of a covered
1177 institution and to furnish indemnifying bonds, notes, or other obligations or to pledge such securities as
1178 may be required by such institution.

1179 Article 5.

1180 Capital Projects; Procurement; Property Generally.

1181 § 23-38.110. Capital projects.

1182 A. All capital projects of a covered institution, whether funded by an appropriation of the General
1183 Assembly or otherwise, shall be approved by such institution's governing body, and the governing body
1184 of each covered institution shall adopt policies for the review, approval, and implementation of all
1185 capital projects undertaken by the institution.

1186 B. Except as otherwise provided in subdivision C 2, capital projects undertaken at a covered
1187 institution shall be exempt from any state statutes, rules, regulations, or guidelines pertaining to the
1188 review, approval, administrative or other policy or procedure functions performed or required by the
1189 Department of General Services, the Division of Engineering and Buildings, the Department of Planning
1190 and Budget, and any other state agency that supports the functions performed by these departments.

1191 C. Capital projects undertaken at a covered institution shall be subject to the institution's capital
1192 project policies adopted pursuant to subsection A, and:

1193 1. Any capital project undertaken at a covered institution shall be subject to the environmental,
1194 historic preservation and conservation requirements of state statutes that are generally applicable to
1195 capital projects in the Commonwealth, other than those described in subsection B; and

1196 2. If the capital project is funded in whole or in part with a general fund appropriation for that
1197 purpose or proceeds from a general obligation bond issue under Article X, Section 9(a) or (b) of the
1198 Constitution of Virginia, the project shall remain subject to such pre-appropriation approvals as are in
1199 effect from time to time within the executive and legislative branches of state government, but such
1200 project shall nevertheless be exempt from any and all state post-appropriation review, approval,
1201 administrative or other policy or procedure functions performed or required by the Department of
1202 General Services, the Division of Engineering and Buildings, the Department of Planning and Budget,
1203 and any other state agency that supports the functions performed by these departments.

1204 3. If a covered institution constructs improvements on land, or renovates property, that originally
1205 was acquired or constructed in whole or in part with a general fund appropriation for that purpose or
1206 proceeds from a general obligation bond issue under Article X, Section 9(a) or (b) of the Constitution of
1207 Virginia, and such improvements or renovations are undertaken entirely with funds not appropriated by
1208 the General Assembly, such improvements or renovations must be consistent with such institution's
1209 master plan approved by its governing body and, if the cost of such improvements or renovations is
1210 reasonably expected to exceed \$2 million, the institution's decision to undertake such improvements or
1211 renovations shall be communicated to the Governor and to the Chairmen of the Senate Committee on
1212 Finance and the House Committee on Appropriations no later than 60 days prior to (i) commencement
1213 of construction or renovation or (ii) issuance of bonds, notes, or other obligations to finance such
1214 construction or renovation.

1215 D. A covered institution shall have the authority to designate its own building official who is hereby
1216 authorized to determine the suitability for occupancy of, and to issue certifications for building
1217 occupancy for, all capital projects undertaken at that institution, and who, prior to issuing any such
1218 certification, shall ensure that the Virginia Uniform Statewide Building Code § (36-97 et seq.)
1219 requirements are met for that capital project and that such project has been inspected by the State Fire
1220 Marshal or his designee. The building official shall report directly to the Board of Visitors of the
1221 institution and shall be subject to review by the appropriate personnel in the Department of General
1222 Services.

1223 § 23-38.111. Procurement; discrimination prohibited; participation of women- or minority-owned and
1224 small businesses.

1225 A. Subject to the express provisions of the management agreement described in § 23-38.88, covered
1226 institutions shall be exempt from the provisions of the Virginia Public Procurement Act (§ 2.2-4300 et
1227 seq.), except for § 2.2-4342 (which section shall not be construed to require compliance with the
1228 prequalification application procedures of subsection B of § 2.2-4317), and from any other state statutes,

rules, regulations or requirements relating to procurement of goods and services; provided, however, that the governing body of a covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of goods and services, including professional services, that shall be based upon competitive principles and shall in each instance seek competition to the maximum practical degree. The policies shall implement a system of competitive negotiation for professional services pursuant to subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" under § 2.2-4301, shall prohibit discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation or award of contracts, shall incorporate the prompt payment principles of §§ 2.2-4350 and 2.2-4354, and shall consider the impact on correctional enterprises under § 53.1-47.

B. Such policies may, among other things, (i) provide for consideration of the dollar amount of the intended procurement, the term of the anticipated contract, and the likely extent of competition; (ii) implement a prequalification procedure for contractors or products; and (iii) include provisions for cooperative arrangements with other covered institutions, other public or private educational institutions, other public or private organizations or entities, including public-private partnerships, public bodies, charitable organizations, health care provider alliances or purchasing organizations or entities, state agencies or institutions of the Commonwealth or the several states, the District of Columbia, the territories and the United States, and any combination thereof. Nothing in this section shall preclude a covered institution from requesting and utilizing, and covered institutions are hereby encouraged to utilize, the assistance of the Virginia Information Technologies Agency in information technology procurements when the covered institution determines that it is more cost effective to obtain such assistance than to engage in such procurements through other means.

C. In the solicitation and awarding of contracts, no covered institution shall discriminate against a bidder or offeror because of race, religion, color, sex, national origin, age, disability, or any other basis prohibited by state or federal law. The procurement policies of a covered institution shall provide that, whenever solicitations are made seeking competitive procurement of goods or services, it shall be a priority of the institution to provide for fair and reasonable consideration of women-owned, minority-owned, and small businesses and to promote and encourage a diversity of suppliers.

§ 23-38.112. Information technology.

Covered institutions shall be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ 2.2-2005 et seq.) of Title 2.2., and the provisions governing the Information Technologies Investment Board, Article 20 of Chapter 24 (§ 2.2-2457 et seq.) of Title 2.2; provided, however, that the governing body of a covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of information technology goods and services, including professional services, that are consistent with the requirements of § 23-38.111 and that include provisions addressing cooperative arrangements for such procurement as described in § 23-38.111, and shall adopt and comply with institutional policies regarding information technology planning, budgeting, projects, infrastructure, security, and ongoing operations.

§ 23-38.113. Acquisition, possession, operation, and disposition of property; acceptance of grants and loans.

A. Nothing in this subsection shall limit or reduce the authority granted to a covered institution in §§ 23-38.110 and 23-38.114, which shall govern the planning, design, construction, and implementation of capital projects and leases by covered institutions. In order to continue its mission as a public institution of higher education:

1. A covered institution may continue to hold, possess, operate, and dispose of any property, real or personal, tangible or intangible, that such covered institution held, possessed, or operated prior to its Management Agreement Effective Date as follows:

a. If the property is real property, including land, buildings, and any improvements to land or buildings, and it was acquired or constructed in whole or in part with general fund appropriations or proceeds from a general obligation bond issue under Article X, Section 9(a) or 9(b) of the Constitution of Virginia, the covered institution (i) shall hold, possess, and operate such property in accordance with the institution's enabling legislation, with this subchapter, and with any policies adopted by the governing body of the institution pursuant thereto, and (ii) shall dispose of such property in accordance with general law applicable to state-owned property and with the institution's enabling legislation.

b. If the property is real property, including land, buildings, and any improvements to land or buildings, and it was acquired or constructed either (i) entirely with nongeneral fund appropriations or proceeds from a nongeneral fund revenue bond issue under Article X, Section 9(c) or 9(d) of the Constitution of Virginia, or (ii) entirely with funds other than funds appropriated by the General Assembly or proceeds from a general obligation bond issue under Article X, Section 9(a) or 9(b) of the Constitution of Virginia, the covered institution shall hold, possess, operate, and dispose of such property in accordance with the institution's enabling legislation, notwithstanding the approval requirements of § 23-77.1, with this subchapter, and with any policies adopted by the governing body of

1290 *the institution pursuant thereto.*

1291 *c. If the property is personal property, the covered institution shall hold, possess, operate, and*
1292 *dispose of such property in accordance with the institution's enabling legislation, with this subchapter,*
1293 *and with any policies adopted by the governing body of the institution pursuant thereto.*

1294 *2. After its Management Agreement Effective Date as provided in § 23-38.88, a covered institution*
1295 *may acquire any real property, construct improvements thereon in accordance with § 23-38.110, and*
1296 *acquire any personal property, tangible or intangible, and hold, possess, operate, and dispose of such*
1297 *real and personal property as follows:*

1298 *a. If the property is real property, including land, buildings, and improvements to land or buildings,*
1299 *and it is acquired or constructed with funds appropriated by the General Assembly for that purpose or*
1300 *with proceeds from a general obligation bond issue under Article X, Section 9(a) or 9(b) of the*
1301 *Constitution of Virginia, the covered institution (i) shall hold, possess, and operate such property in*
1302 *accordance with the institution's enabling legislation, with this subchapter, and with any policies*
1303 *adopted by the governing body of the institution pursuant thereto, and (ii) shall dispose of such property*
1304 *in accordance with general law applicable to state-owned property and with the covered institution's*
1305 *enabling legislation.*

1306 *b. If the property is real property, including land, buildings, and improvements to land or buildings,*
1307 *and the property is acquired with any funds in the covered institution's possession, other than any funds*
1308 *appropriated by the General Assembly or proceeds from a general obligation bond issue under Article,*
1309 *X, Section 9(a) or 9(b) of the Constitution of Virginia, the institution shall hold, possess, operate,*
1310 *dispose of, and otherwise deal with such property, or any right, easement, estate, or interest therein,*
1311 *acquired by purchase, exchange, gift, assignment, transfer, foreclosure, lease, bequest, devise, operation*
1312 *of law, or other means, in accordance with the covered institution's enabling legislation, notwithstanding*
1313 *the approval requirements of § 23-77.1, with this subchapter, and with any policies adopted by the*
1314 *governing body of the institution pursuant thereto.*

1315 *c. If the property is personal property, the institution shall hold, possess, operate, and dispose of*
1316 *such property in accordance with the institution's enabling legislation, with this subchapter, and with*
1317 *any policies adopted by the governing body of the institution pursuant thereto.*

1318 *3. Consistent with the provisions of subdivisions 1 and 2 of this subsection, may sell, assign,*
1319 *encumber, mortgage, demolish, or otherwise dispose of any project or any other property, real or*
1320 *personal, tangible or intangible, or any right, easement, estate, or interest therein, or any deed of trust*
1321 *or mortgage lien interest owned by it, under its control or custody or in its possession, and may release*
1322 *or relinquish any right, title, claim, lien, interest, easement, or demand however acquired, including any*
1323 *equity or right of redemption in property foreclosed by it; and*

1324 *4. May do any of the foregoing by public or private transaction.*

1325 *B. A covered institution may accept loans, grants, contributions, or other assistance from the federal*
1326 *government, the Commonwealth or any political subdivision thereof, or from any other public or private*
1327 *source to carry out its mission as a public institution of higher education of the Commonwealth and any*
1328 *of the purposes of this subchapter. A covered institution may enter into any agreement or contract*
1329 *regarding or relating to the acceptance, use, or repayment of any such loan, grant, contribution, or*
1330 *assistance, and may enter into such other agreements with any such entity in furtherance of the*
1331 *purposes of this subchapter. Counties, cities, and towns are hereby authorized to lend or donate money*
1332 *or other property to a covered institution for any of its purposes. Any local government making the*
1333 *grant or loan may restrict the use of the grant or loan to a specific project, within or without that*
1334 *locality.*

1335 *§ 23-38.114. Leases of property.*

1336 *The governing body of a covered institution shall adopt such policies relating to the leasing of real*
1337 *property, including capital, operating, or income leases, that reasonably ensure that such leases are*
1338 *efficiently procured on appropriate terms and for appropriate purposes. Other than applicable policies*
1339 *adopted by a covered institution's board of visitors and provisions of general law that expressly apply to*
1340 *covered institutions, such institutions shall be exempt from any state or local statutes or ordinances,*
1341 *rules, regulations, and guidelines relating to operating and income leases of real or personal property*
1342 *by public entities and, except as otherwise provided in § 23-38.110, to capital leases.*

1343 *Article 6.*

1344 *Human Resources.*

1345 *§ 23-38.115. Human resources systems.*

1346 *A. Covered Employees are state employees of a covered institution of the Commonwealth of Virginia.*
1347 *As used in this article, the term "grandfathered" Covered Employee means any Covered Employee who*
1348 *was hired prior to the Management Agreement Effective Date for that covered institution, except that*
1349 *such term shall not include employees of the University of Virginia Medical Center. The term*
1350 *"nongrandfathered" Covered Employee means a Covered Employee who is employed on or after the*
1351 *Management Agreement Effective Date of a covered institution, and employees of the University of*

Virginia Medical Center without regard to when they were hired.

B. The governing body of each covered institution may elect to adopt either (i) one or more human resources systems for nonfaculty Covered Employees that is or are generally consistent with the provisions of Chapters 28 (§ 2.2-2800 et seq.) and 29 (§ 2.2-2900 et seq.) of Title 2.2, pertaining generally to state employees, or (ii) such other human resources system or systems for nonfaculty Covered Employees as it determines to be appropriate. The covered institution may administer such human resources system or systems itself or may contract with another covered institution or with the Department of Human Resources Management to administer some or all of its human resources systems, subject to the execution of any participation or operating agreement as the parties to that agreement may deem necessary and appropriate.

C. Each covered institution may establish a human resources system or systems for Covered Employees not included in subsection B, including a system or systems relating to those other personnel that its enabling legislation authorizes it to employ. In addition, such institution may, in its discretion, contract for such consultants, attorneys, accountants, and financial experts, and such independent providers of expert advice and consultation as may be necessary or desirable in the judgment of the covered institution.

D. Any human resources system adopted by the governing body of a covered institution for Covered Employees shall be based on merit principles and objective methods of appointment, promotion, transfer, layoff, removal, severance, discipline, and other appropriate topics included in such a human resources system based on such principles and methods.

§ 23-38.116. Grievance procedures.

A. The governing body of each covered institution shall adopt policies that encourage the resolution of employment-related problems and complaints of the nonfaculty Covered Employees of that institution. Such policies shall provide that nonfaculty Covered Employees of the institution shall be able to discuss their concerns with their immediate supervisors and management freely and without retaliation. To the extent that such concerns cannot be resolved informally, the State Grievance Procedure, Chapter 30 (§ 2.2-3000 et seq.) of Title 2.2 shall apply to the covered institution's nonfaculty Covered Employees to the same extent that it applied to the same classifications of nonfaculty employees prior to the institution's Management Agreement Effective Date.

B. A covered institution shall continue to make grievance policies available to faculty Covered Employees to the extent that such policies were applicable to faculty Covered Employees prior to its Management Agreement Effective Date, and may amend any such policies.

C. A covered institution is not required to adopt grievance policies governing Covered Employees not included in subsections A and B of this section, but it may, in its discretion, do so for some or all such Covered Employees, and such grievance policies may be the same as or different from the grievance policies adopted pursuant to subsection A.

§ 23-38.117. Miscellaneous personnel matters.

A. All appointments to, and promotions and tenure in, positions in the service of a covered institution shall be based upon merit and fitness, to be ascertained, as far as possible, by the competitive rating of qualifications by that institution.

B. No establishment of a position or rate of pay, and no change in rate of pay, shall become effective except on order of the appointing covered institution.

C. No Covered Employee of, or applicant for employment with, any covered institution shall be required, as a condition of employment, to smoke or use tobacco products on the job, or to abstain from smoking or using tobacco products outside the course of his employment, provided that this section shall not apply to those classes of employees to which § 27-40.1 or 51.1-813 is applicable.

D. The human resources policies adopted by the governing body of a covered institution shall, consistent with applicable federal law, address (i) employment of Covered Employees who leave the service of a covered institution for service in any of the armed forces of the United States, and the employment of other veterans of such military service, following the termination of their military service; and (ii) leave and other policies affecting the employment of Covered Employees who have been ordered to active military service in the armed forces of the United States, or in the organized reserve forces of any of the armed services of the United States, or of the Virginia National Guard. "Active military duty," as used in this subsection, means federally funded military duty as (i) a member of the armed forces of the United States on active duty pursuant to Title 10 of the United States Code or (ii) a member of the Virginia National Guard on active duty pursuant to either Title 10 or Title 32 of the United States Code.

§ 23-38.118. Insurance plans; legal process and assignment.

Insurance provided under this article and all proceeds therefrom shall be subject to the same provisions regarding exemption from levy, garnishment and other legal process as is provided to Virginia Retirement System plans under § 51.1-510; provided, however, that permitted assignments shall

1413 *be effected through completion of forms provided by the covered institution or its vendor, and provided*
1414 *further, that for insurance plans established by a covered institution, the authority granted to the Board*
1415 *of the Virginia Retirement System in § 51.1-510 is hereby granted to and shall be exercised by the*
1416 *covered institution.*

1417 *§ 23-38.119. Health insurance plans.*

1418 *Each covered institution is authorized to (i) have its eligible Covered Employees participate in the*
1419 *state employees' health insurance plan established pursuant to § 2.2-2818, under the same terms and*
1420 *conditions that apply to, and with the same benefits that are available to, other state employees, (ii)*
1421 *establish a health insurance plan for the benefit of at least those of its Covered Employees who would*
1422 *be eligible to participate in the state employees' health insurance plan pursuant to clause (i), or (iii)*
1423 *elect any combination of clauses (i) and (ii).*

1424 *§ 23-38.120. Additional insurance plans.*

1425 *A. Each covered institution (i) shall purchase or make available group life and accidental death and*
1426 *dismemberment insurance policies covering in whole or in part those of its Covered Employees eligible*
1427 *to participate in the Virginia Retirement System, and (ii) may purchase or make available such*
1428 *additional insurance policies covering its salaried Covered Employees, and such insurance policies*
1429 *covering its other Covered Employees, as it deems appropriate. Covered Employees shall not be*
1430 *required to present evidence of insurability satisfactory to an insurance company for basic group life*
1431 *insurance coverage. A covered institution shall offer (i) to all grandfathered Covered Employees, at*
1432 *least as much insurance coverage of the type described in this subsection as they were provided*
1433 *immediately prior to the institution's Management Agreement Effective Date, and (ii) to those*
1434 *grandfathered Covered Employees who are active participants in a Virginia Retirement System*
1435 *administered retirement plan, basic group life insurance that has at least the same level of benefits as*
1436 *provided by the Virginia Retirement System group life insurance plan for state employees that was in*
1437 *effect immediately prior to the institution's Management Agreement Effective Date, unless and until the*
1438 *Virginia Retirement System reduces those benefits. All nongrandfathered salaried Covered Employees*
1439 *shall be offered basic group life insurance at a level of coverage determined by such institution's*
1440 *governing body. A covered institution may require nongrandfathered Covered Employees to pay all or a*
1441 *portion of the cost of the insurance coverage offered pursuant to this subsection, which may be collected*
1442 *through a payroll deduction program. If the institution's governing body so elects, and subject to the*
1443 *execution of such participation agreements as the Virginia Retirement System may require, the covered*
1444 *institution's Covered Employees may be covered by the Virginia Retirement System's group insurance*
1445 *programs established pursuant to Chapter 5 (§ 51.1-500 et seq.) of Title 51.1 under the same terms and*
1446 *conditions that apply to, and with the same benefits that are available to, other state employees.*

1447 *B. For those of its Covered Employees eligible to participate in the Virginia Retirement System, a*
1448 *covered institution shall (i) purchase disability insurance, (ii) subject to the execution of such*
1449 *participation agreements as may be necessary, appropriate, and in the best interests of the*
1450 *Commonwealth, continue to participate in the disability insurance program established for state*
1451 *agencies, (iii) establish a self-insured disability insurance program, or (iv) any combination of clauses*
1452 *(i) through (iii). A covered institution may require nongrandfathered Covered Employees to pay all or a*
1453 *portion of the cost of the insurance coverage offered pursuant to this subsection, which may be collected*
1454 *through a payroll deduction program. However, the covered institution shall not be required to*
1455 *contribute to the program established for state agencies on behalf of Covered Employees who do not*
1456 *participate in that program.*

1457 *C. At the election of a covered institution's governing body, such institution (i) may purchase*
1458 *workers' compensation insurance, (ii) subject to the execution of such participation agreements as may*
1459 *be necessary, appropriate, and in the best interests of the Commonwealth, may continue to participate in*
1460 *the program established for state agencies in accordance with the provisions of Title 65.2, or (iii) may*
1461 *establish a self-insured workers' compensation program in accordance with § 65.2-801.*

1462 *D. If a covered institution's governing body so elects, and subject to the execution of such*
1463 *participation agreements as may be necessary, appropriate, and in the best interests of the*
1464 *Commonwealth, each such institution or its Covered Employees, or both, may participate in any future*
1465 *insurance programs established for state employees under the same terms and conditions that apply to,*
1466 *and with the same benefits that are available to, other state employees.*

1467 *§ 23-38.121. Severance Policies.*

1468 *A. Each covered institution shall adopt one or more severance policies for its Covered Employees,*
1469 *applicable to voluntary or involuntary separations, including reductions in workforce. The provisions of*
1470 *the Workforce Transition Act (§ 2.2-3200 et seq.) shall not apply to Covered Employees.*

1471 *B. The terms and conditions of a covered institution's severance policy or policies shall be*
1472 *determined by the institution's governing body, except that a covered institution shall provide severance*
1473 *benefits to Covered Employees who were its employees prior to its Management Agreement Effective*
1474 *Date and who otherwise would be eligible for severance benefits under the Workforce Transition Act*

(§ 2.2-3200 et seq.) that are no less than the severance benefits that such Covered Employees would receive under §§ 2.2-3203 and 2.2-3204 if the institution were not a covered institution. Each full year of service rendered to a covered institution by such Covered Employees shall be treated as an equivalent year of service to the Commonwealth for purposes of § 2.2-3203, and for purposes of § 2.2-3204 for such Covered Employees who are eligible for credits under that section. The terms and conditions of the covered institution's severance policy or policies for Covered Employees who are hired by a covered institution on or after the institution's Management Agreement Effective Date shall be determined by the institution's governing body; provided that the value of the severance benefits for any Covered Employee hired on or after the Management Agreement Effective Date who would otherwise be eligible for severance benefits under the Workforce Transition Act (§ 2.2-3200 et seq.) shall not be less than two-thirds of the value of the benefits that would have been paid under the Workforce Transition Act (§ 2.2-3200 et seq.). The covered institution and the Board of the Virginia Retirement System shall negotiate a formula according to which cash severance benefits may be converted to years of age or creditable service for Covered Employees who participate in the Virginia Retirement System.

C. Covered Employees who were employees of a covered institution and were covered by the provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 prior to its Management Agreement Effective Date, who otherwise would be eligible for severance benefits under the Workforce Transition Act (§ 2.2-3200 et seq.), and who are separated by a covered institution because of a reduction in workforce shall have the same preferential hiring rights with state agencies and other executive branch institutions as state employees have under § 2.2-3201. Conversely, the covered institution shall recognize the hiring preference conferred by § 2.2-3201 on state employees who were hired by a state agency or executive branch institution before the covered institution's Management Agreement Effective Date. In the event a covered institution has adopted a classification system pursuant to § 23-38.115 that differs from the classification system administered by the Department of Human Resources Management, the hiring agency, institution, or covered institution shall classify the terminated employee according to its classification system and shall place the terminated employee appropriately. Classification decisions made under this subsection and applying to employees transferring between covered institutions and state agencies or other executive branch institutions, or between covered institutions, as a result of a reduction in force and with the preferential hiring rights provided in this subsection and in § 2.2-3201 shall be presumed appropriate, and a terminated employee who grieves the classification decision shall bear the burden of demonstrating that the classification violates the terminated employee's preferential hiring rights.

D. An employee's transition on a covered institution's Management Agreement Effective Date from being an employee of a public institution of higher education to being a Covered Employee of a covered institution shall not, in and of itself, constitute a severance of that employee or a reduction in force that would make either the covered institution's severance policy or policies adopted pursuant to subsection A or the Workforce Transition Act (§ 2.2-3200 et seq.) applicable to that employee.

Article 7.

Additional Authority Subject to Management Agreement.

§ 23-38.122. Restructured authority subject to management agreement.

As provided in subsection D of § 23-38.88, no restructured financial or operational authority set forth in Subchapter 3 (§ 23-38.91 et seq.) of this chapter or any other provision of such chapter shall become effective unless and until the authority or provision is expressly included in a management agreement and all other conditions of subdivisions D 1 and D 2 of § 23-38.88 have been met.

§ 30-133.1. Additional certifications for public institutions of higher education.

In addition to all other responsibilities and duties required under law, the Auditor of Public Accounts shall, promptly upon completion of the annual audit for each public institution of higher education, certify in writing to the Chairman of the Board of Visitors or other governing body of the institution, the Secretaries of Education and Finance, and the Chairman of the House Committee on Appropriations, House Committee on Finance, and Senate Committee on Finance whether or not the institution meets all of the financial and administrative management standards currently in effect for public institutions of higher education pursuant to § 2.2-5004 and as may be included in the appropriation act currently in effect. In addition, for any public institution of higher education required to develop and implement a plan of corrective action under § 2.2-5004, the Auditor shall at the time of making the certification provide a written evaluation of the institution's progress in implementation of the plan and in meeting all of the financial and administrative management standards currently in effect.

For purposes of this section "public institution of higher education" means the same as that term is defined in § 23-38.89.

§ 36-98.1. State buildings.

A. The Building Code shall be applicable to all state-owned buildings and structures, with the exception that §§ 2.2-1159 through 2.2-1161 shall provide the standards for ready access to and use of

1536 state-owned buildings by the physically handicapped.

1537 Any state-owned building or structure for which preliminary plans were prepared or on which
1538 construction commenced after the initial effective date of the Uniform Statewide Building Code, shall
1539 remain subject to the provisions of the Uniform Statewide Building Code that were in effect at the time
1540 such plans were completed or such construction commenced. Subsequent reconstruction, renovation or
1541 demolition of such building or structure shall be subject to the pertinent provisions of the Building
1542 Code.

1543 Acting through the Division of Engineering and Buildings, the Department of General Services shall
1544 function as the building official for state-owned buildings. The Department shall review and approve
1545 plans and specifications, grant modifications, and establish such rules and regulations as may be
1546 necessary to implement this section. It shall provide for the inspection of state-owned buildings and
1547 enforcement of the Building Code and standards for access by the physically handicapped by delegating
1548 inspection and Building Code enforcement duties to the State Fire Marshal's Office, to other appropriate
1549 state agencies having needed expertise, and to local building departments, all of which shall provide
1550 such assistance within a reasonable time and in the manner requested. State agencies and institutions
1551 occupying buildings shall pay to the local building department the same fees as would be paid by a
1552 private citizen for the services rendered when such services are requested by the Department of General
1553 Services. The Department of General Services may alter or overrule any decision of the local building
1554 department after having first considered the local building department's report or other rationale given
1555 for its decision. When altering or overruling any decision of a local building department, the Department
1556 of General Services shall provide the local building department with a written summary of its reasons
1557 for doing so.

1558 *B. Notwithstanding the provisions of subsection A, at the request of a public institution of higher*
1559 *education, the Department shall authorize that institution of higher education to contract with a building*
1560 *official of the locality in which the construction is taking place to perform on behalf of the Department*
1561 *any inspection and certifications required for the purpose of complying with the Uniform Statewide*
1562 *Building Code (§ 36-97 et seq.). The authority granted to a public institution of higher education under*
1563 *this subsection to contract with a building official of the locality shall be subject to the institution*
1564 *meeting the conditions prescribed in subsection B of § 23-38.88.*

1565 2. That the Secretary of Finance, in consultation with representatives of public institutions of
1566 higher education in the Commonwealth and other interested persons, shall develop procedures for
1567 determining an appropriate and equitable amount of interest to be paid to certain public
1568 institutions of higher education as provided in § 2.2-5005 of the Code of Virginia pursuant to this
1569 act. The Secretary of Finance shall by January 1, 2006, provide to the Governor and to the
1570 General Assembly the procedures that shall be used for such purposes.

1571 3. That § 2.2-5005 of the first enactment of this act shall become effective on July 1, 2006.

1572 4. That the Governor shall review the financial management standards included in § 2.2-5004 of
1573 the Code of Virginia and shall recommend, as he deems appropriate, additional financial
1574 management standards in "The Budget Bill" submitted in calendar year 2005 pursuant to
1575 subsection A of § 2.2-1509 of the Code of Virginia.

1576 The Governor shall also establish, by August 15, 2005, an independent advisory board consisting
1577 of members with professional expertise in the areas of capital project management, personnel
1578 management, and purchasing to develop administrative management standards for public
1579 institutions of higher education. The advisory board shall submit a written report to the Governor
1580 and the General Assembly by October 1, 2005, prescribing administrative management standards
1581 for public institutions of higher education. The Governor shall include recommendations for
1582 administrative management standards for public institutions of higher education in "The Budget
1583 Bill" submitted in calendar year 2005 pursuant to subsection A of § 2.2-1509 of the Code of
1584 Virginia. In making such recommendations, the Governor shall take into consideration the report
1585 of the independent advisory board.

1586 5. That the Secretary of Administration shall work with public institutions of higher education
1587 and other interested persons to develop uniform government procurement rules and procedures
1588 that shall be adopted by public institutions of higher education that have been granted the express
1589 authority under a management agreement to establish an alternative system of government
1590 procurement. The Secretary shall provide a copy of the rules and procedures to the Governor and
1591 to the General Assembly no later than October 1, 2005.

1592 6. That the Virginia Retirement System shall (i) complete an actuarial analysis of the potential
1593 impact on the Commonwealth's retirement system and group insurance programs for state
1594 employees if public institutions of higher education in the Commonwealth included in subchapter 2
1595 or 3 of Chapter 4.10 of Title 23, or in both subchapters, or all public institutions of higher
1596 education in the Commonwealth, were permitted to offer an optional retirement plan and optional
1597 group insurance programs to classified employees who are, or who prior to the effective date of

1598 this Act were, covered by the State Personnel Act, and (ii) report the results of this analysis to the
1599 Chairmen of the House Appropriations Committee and the Senate Finance Committee no later
1600 than November 1, 2005. The Department of Human Resource Management shall conduct the same
1601 analysis for the group insurance programs that it administers and shall report the results of the
1602 analysis to the Chairmen of the House Appropriations Committee and the Senate Finance
1603 Committee no later than November 1, 2005. In addition, the Department of the Treasury shall
1604 conduct the same analysis for all risk management programs it administers and shall have the
1605 same reporting responsibility described herein.