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HOUSE BILL NO. 2510

Offered January 21, 2011

A *BILL to amend and reenact §§ 2.2-1124, 2.2-1132, 2.2-1149, 2.2-1150, 2.2-1153, 2.2-1404.1, 2.2-1514, 2.2-1830, 2.2-2007, 2.2-2901, 2.2-5005, 23-9.2:3, 23-9.6:1, 23-9.14:2, 23-38.88, 23-38.90, 23-38.91, 23-38.93, 23-38.97, and 36-98.1 of the Code of Virginia, to amend the Code of Virginia by adding in Title 23 a chapter numbered 4.9:1, consisting of sections numbered 23-38.87:10 through 23-38.87:24, and to repeal §§ 23-9.2:3.02, 23-9.2:3.03, and 23-9.6:1.01 of the Code of Virginia, relating to reform and restructuring of the Commonwealth's system of higher education.*

Patrons—Cox, M.K., Dance, Albo, Alexander, Armstrong, Athey, BaCote, Bulova, Carr, Cleaveland, Comstock, Ebbin, Filler-Corn, Greason, Herring, Howell, W.J., Ingram, James, Jones, Keam, Kilgore, Landes, Lewis, Lingamfelter, May, McClellan, McQuinn, Miller, P.J., O'Bannon, Peace, Phillips, Plum, Pollard, Rust, Scott, J.M., Sherwood, Shuler, Spruill, Torian, Toscano, Tyler, Villanueva, Ware, O., Watts and Wright

Referred to Committee on Appropriations

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, 2.2-1404.1, 2.2-1514, 2.2-1830, 2.2-2007, 2.2-2901, 2.2-5005, 23-9.2:3, 23-9.6:1, 23-9.14:2, 23-38.88, 23-38.90, 23-38.91, 23-38.93, 23-38.97, and 36-98.1 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding in Title 23 a chapter numbered 4.9:1, consisting of sections numbered 23-38.87:10 through 23-38.87:24, 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, including online public 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 such 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, electronics, 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;

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55 12. Permit donations of surplus computers and related equipment to public schools in the
56 Commonwealth and Virginia charitable corporations granted tax-exempt status under § 501(c)(3) of the
57 Internal Revenue Code and providing services to persons with disabilities, at-risk youths, or low-income
58 families. For the purposes of this subdivision, "at-risk youths" means school-age children approved
59 eligible to receive free or reduced price meals in the federally funded lunch program;

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

63 14. Permit a public institution of higher education to dispose of its surplus materials at the location
64 where the surplus materials are held and to retain any proceeds from such disposal, provided that the
65 institution meets the conditions ~~prescribed in subsection B of § 23-38.88~~*developed pursuant to*
66 *subdivision B 5 of § 23-38.87:23* and *prescribed in § 23-38.112* (regardless of whether or not the
67 institution has been granted any authority under Subchapter 3 (§ 23-38.91 et seq.) of Chapter 4.10 of
68 Title 23); and

69 15. Require, to the extent practicable, the recycling and disposal of computers and other information
70 technology assets. Additionally, for computers or information technology assets that may contain
71 confidential state data or personal identifying information of citizens of the Commonwealth, the
72 Department shall ensure all policies for the transfer or other disposition of computers or information
73 technology assets are consistent with data and information security policies developed by the Virginia
74 Information Technologies Agency.

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

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

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

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

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

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

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

98 F. The Department may make available to any local public body of the Commonwealth the services
99 or facilities authorized by this section; however, the furnishing of any such services shall not limit or
100 impair any services normally rendered any department, division, institution or agency of the
101 Commonwealth. All public bodies shall be authorized to use the services of the Department's Surplus
102 Property Program under the guidelines established pursuant to this section and the surplus property
103 policies and procedures of the Department. Proceeds from the sale of the surplus property shall be
104 returned to the local body minus a service fee. The service fee charged by the Department shall be
105 consistent with the fee charged by the Department to state public bodies.

106 § 2.2-1132. Administration of capital outlay construction; exception for certain educational
107 institutions.

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

114 B. The Division may establish standards, as needed, for construction by the Commonwealth and may,
115 with the advice of the Attorney General, establish standard contract provisions and procedures for the
116 procurement and administration of construction and for the procurement and administration of

architectural and engineering services relating to construction, which shall be used by all departments, agencies and institutions of the Commonwealth. All departments, agencies and institutions of the Commonwealth shall ensure that the design and construction of state-owned buildings comply with the standards governing energy use and efficiency established by the Division. The standards may provide for incentive contracting that offers a contractor whose bid is accepted the opportunity to share in any cost savings realized by the Commonwealth when project costs are reduced by the contractor, without affecting project quality, during construction of the project. The fee, if any, charged by the project engineer or architect for determining the cost savings shall be paid as a separate cost and shall not be calculated as part of any cost savings.

C. Notwithstanding any standards established by the Division or law to the contrary except as provided in this subsection, any public institution of higher education that has 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 may enter into contracts for specific construction projects without the preliminary review and approval of the Division, provided such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and utilize the general terms and conditions for those forms of procurement approved by the Division and the Office of the Attorney General. The authority granted in this subsection shall only become effective if the institution meets the conditions ~~prescribed in subsection B of § 23-38.88~~ *developed pursuant to subdivision B 5 of § 23-38.87:23*. The Secretary of Administration shall establish guidelines to assist institutions in evaluating alternative project delivery methods prior to entering into a contract. For projects constructed pursuant to this subsection, the responsibility of the Division of Engineering and Buildings shall be as set forth in subsection C of § 36-98.1.

For purposes of this section, "construction" shall include new construction, reconstruction, renovation, restoration, major repair, demolition and all similar work upon buildings and ancillary facilities owned 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:

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;

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;

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~~ *developed pursuant to subdivision B 5 of § 23-38.87:23*;

5. Entering into an operating/income lease or a capital lease by a public institution of higher education, for real property to be used for academic purposes, or for real property owned by the institution or a foundation related to the institution to be used for non-academic purposes, in accordance with the institution's land use plan pursuant to § 2.2-1153 provided that (i) the capital lease does not constitute tax-supported debt of the Commonwealth, (ii) the institution meets the conditions ~~prescribed in subsection B of § 23-38.88~~ *developed pursuant to subdivision B 5 of § 23-38.87:23*, and (iii) for purposes of entering into 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

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,

178 acquisitions of real property by the Department of Transportation for office space, district offices,
179 residencies, area headquarters, or correctional facilities shall be subject to the Department's review and
180 the Governor's approval.

181 § 2.2-1150. Conveyance and transfers of real property by state agencies; approval of Governor and
182 Attorney General; notice to members of General Assembly.

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

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

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

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

194 Prior to entering into any negotiations for the conveyance or transfer of any portion of Camp
195 Pendleton or any military property that has been or may be conveyed to the Commonwealth pursuant to
196 a recommendation by the Defense Base Closure Realignment Commission, the Department shall give
197 written notice to all members of the General Assembly within the planning district in which such
198 property is located. If, within 30 days of receipt of the Department's notice, 25 percent of such members
199 of the General Assembly give notice to the Department that they object to such conveyance or that they
200 require additional information, the Department shall conduct a meeting, with written notice thereof to all
201 members of the General Assembly within that planning district, at which the Department and such
202 members shall discuss the proposed transaction. Members of the General Assembly objecting to the
203 proposed transaction after the meeting shall convey their objections in detail to the Governor, who shall
204 consider the objections. Certification of compliance with the foregoing requirements by the Governor in
205 a deed or other instrument conveying or transferring any portion of Camp Pendleton or any such
206 military property, absent knowledge by the purchaser or transferee to the contrary, shall serve as prima
207 facie evidence of compliance with this subsection.

208 C. Notwithstanding the provisions of subsection B, a public institution of higher education may
209 convey an easement pertaining to any property such institution owns or controls provided that the
210 institution meets the conditions ~~prescribed in subsection B of § 23-38.88~~ *developed pursuant to*
211 *subdivision B 5 of § 23-38.87.23* and *prescribed in § 23-38.112* (regardless of whether or not the
212 institution has been granted any authority under Subchapter 3 (§ 23-38.91 et seq.) of Chapter 4.10 of
213 Title 23).

214 § 2.2-1153. State agencies and institutions to notify Department of property not used or required;
215 criteria.

216 A. Whenever any department, agency or institution of state government possesses or has under its
217 control state-owned or leased property that is not being used to full capacity or is not required for the
218 programs of the department, agency or institution, it shall so notify the Department. Such notification
219 shall be in a form and manner prescribed by the Department. Each department, agency and institution
220 shall submit to the Department a land use plan for state-owned property it possesses or has under its
221 control showing present and planned uses of such property. Such plan shall be approved by the
222 cognizant board or governing body of the department, agency or institution holding title to or otherwise
223 controlling the state-owned property or the agency head in the absence of a board or governing body,
224 with a recommendation on whether any property should be declared surplus by the department, agency
225 or institution. Development of such land use plans shall be based on guidelines promulgated by the
226 Department. The guidelines shall provide that each land use plan shall be updated and copies provided
227 to the Department by September 1 of each year. The Department may exempt properties that are held
228 and used for conservation purposes from the requirements of this section. The Department shall review
229 the land use plans and determine whether the property or any portion thereof should be declared surplus
230 to the needs of the Commonwealth. By October 1 of each year, the Department shall provide a report to
231 the Chairmen of the House Appropriations and Senate Finance Committees setting forth the
232 Department's findings, the sale or marketing of properties identified pursuant to this section, and
233 recommending any actions that may be required by the Governor and the General Assembly to identify
234 and dispose of property not being efficiently and effectively utilized.

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

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

C. Notwithstanding the provisions of subsection A:

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

2. Surplus real property valued at less than \$5 million that is possessed and controlled by a public institution of higher education may be sold by such institution, provided that (i) at least 45 days prior to executing a contract for the sale of such property, the institution gives written notification to the Governor and the Chairmen of the House Appropriations and Senate Finance Committees; and (ii) the Governor may postpone the sale at any time up to 10 days prior to the proposed date of sale. Such sale may be effected by public auction, sealed bids, or by marketing through one or more Virginia licensed real estate brokers after satisfying the public notice provisions of subsection A of § 2.2-1156. The terms of all negotiations resulting in such sale shall be public information. The public institution of higher education may retain the proceeds from the sale of such property if the property was acquired by nongeneral funds. If the institution originally acquired the property through a mix of general and nongeneral funds, 50 percent of the proceeds shall be distributed to the institution and 50 percent shall be distributed to the State Park Conservation Resources Fund established under subsection A of § 10.1-202. The authority of a public institution of higher education to sell surplus real property described under this subdivision or to retain any proceeds from the sale of such property shall be subject to the institution meeting the conditions ~~prescribed in subsection B of § 23-38.88 developed pursuant to subdivision B 5 of § 23-38.87.23~~ and *prescribed in § 23-38.112* (regardless of whether or not the institution has been granted any authority under Subchapter 3 (§ 23-38.91 et seq.) of Chapter 4.10 of Title 23).

§ 2.2-1404.1. Use of vendors identified by public institutions of higher education as small, women- and minority-owned businesses.

For purposes of compliance with § 2.2-4310, a public institution of higher education that meets the conditions ~~prescribed in subsection B of § 23-38.88 developed pursuant to subdivision B 5 of § 23-38.87.23~~ may procure goods, services, and construction from vendors identified by such public institutions of higher education as small, women-owned, and minority-owned businesses that the institution has certified as such based on criteria approved by the Department. An institution exercising the authority granted by this section shall establish and follow internal procedures and processes designed to verify whether or not a vendor qualifies to be certified as a small, women-owned, and minority-owned businesses under the Department approved criteria and the certification requirements. The institution shall notify the Department promptly of the certification, and shall provide the Department with a copy of its written certification identifying the vendor as small, women-owned, and minority-owned businesses and all application materials submitted by the vendor to the institution. Such certification shall remain in effect unless and until the Department notifies the institution that the vendor does not meet the certification requirements.

An institution exercising authority granted under this section shall promptly make available to the Department, upon request, copies of its procurement records, receipts, and transactions in regard to procurement from small, women-owned, and minority-owned businesses in order for the Department to ensure institution compliance with its approved reporting and certification criteria.

§ 2.2-1514. (Contingent expiration date - see Editor's notes) Assignment of general fund for nonrecurring expenditures.

A. As used in this section:

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

"Nonrecurring expenditures" means the acquisition or construction of capital outlay projects as defined in § 2.2-1518, the acquisition or construction of capital improvements, the acquisition of land, the acquisition of equipment, or other expenditures of a one-time nature as specified in the general appropriation act. Such term shall not include any expenditures relating to transportation, including but not limited to transportation maintenance.

B. At the end of each fiscal year, the Comptroller shall assign within his annual report pursuant to § 2.2-813 as follows: one-third of the remaining amount of the general fund balance that is not otherwise restricted, committed, or assigned for other usage within the general fund shall be assigned by

301 the Comptroller for nonrecurring expenditures, and two-thirds shall be assigned for deposit into the
302 Transportation Trust Fund. No such assignment shall be made unless the full amounts required for other
303 restrictions, commitments, or assignments including but not limited to (i) the Revenue Stabilization Fund
304 deposit pursuant to § 2.2-1829, (ii) the Virginia Water Quality Improvement Fund deposit pursuant to
305 § 10.1-2128, but excluding any deposits provided under the Virginia Natural Resources Commitment
306 Fund established under § 10.1-2128.1, (iii) capital outlay reappropriations pursuant to the general
307 appropriation act, (iv) (a) operating expense reappropriations pursuant to the general appropriation act,
308 and (b) reappropriations of unexpended appropriations to certain public institutions of higher education
309 pursuant to § 2.2-5005, (v) pro rata rebate payments to certain public institutions of higher education
310 pursuant to § 2.2-5005, (vi) the unappropriated balance anticipated in the general appropriation act for
311 the end of such fiscal year, and (vii) interest payments on deposits of certain public institutions of
312 higher education pursuant to § 2.2-5005 are set aside. ~~The Comptroller shall set aside amounts required~~
313 ~~for clauses (iv) (b), (v), and (vii) beginning with the initial fiscal year as determined under § 2.2-5005~~
314 ~~and for all fiscal years thereafter.~~

315 C. The Governor shall include in "The Budget Bill" pursuant to § 2.2-1509 recommended
316 appropriations from the general fund or recommended amendments to general fund appropriations in the
317 general appropriation act in effect at that time an amount for nonrecurring expenditures and an amount
318 for deposit into the Transportation Trust Fund equal to the amounts assigned by the Comptroller for
319 such purposes pursuant to the provisions of subsection B. Such deposit to the Transportation Trust Fund
320 shall not preclude the appropriation of additional amounts from the general fund for transportation
321 purposes.

322 § 2.2-1514. (Contingent effective date - see Editor's notes) Assignment of general fund for
323 nonrecurring expenditures.

324 A. As used in this section:

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

327 "Nonrecurring expenditures" means the acquisition or construction of capital outlay projects as
328 defined in § 2.2-1518, the acquisition or construction of capital improvements, the acquisition of land,
329 the acquisition of equipment, or other expenditures of a one-time nature as specified in the general
330 appropriation act.

331 B. At the end of each fiscal year, the Comptroller shall assign within his annual report pursuant to
332 § 2.2-813 an amount for nonrecurring expenditures, which shall equal the remaining amount of the
333 general fund balance that is not otherwise restricted, committed, or assigned for other usage within the
334 general fund. No such assignment shall be made unless the full amounts required for other restrictions,
335 commitments, or assignments including but not limited to (i) the Revenue Stabilization Fund deposit
336 pursuant to § 2.2-1829, (ii) the Virginia Water Quality Improvement Fund deposit pursuant to
337 § 10.1-2128, but excluding any deposits provided under the Virginia Natural Resources Commitment
338 Fund established under § 10.1-2128.1, (iii) capital outlay reappropriations pursuant to the general
339 appropriation act, (iv) (a) operating expense reappropriations pursuant to the general appropriation act,
340 and (b) reappropriations of unexpended appropriations to certain public institutions of higher education
341 pursuant to § 2.2-5005, (v) pro rata rebate payments to certain public institutions of higher education
342 pursuant to § 2.2-5005, (vi) the unappropriated balance anticipated in the general appropriation act for
343 the end of such fiscal year, and (vii) interest payments on deposits of certain public institutions of
344 higher education pursuant to § 2.2-5005 are set aside. ~~The Comptroller shall set aside amounts required~~
345 ~~for clauses (iv) (b), (v), and (vii) beginning with the initial fiscal year as determined under § 2.2-5005~~
346 ~~and for all fiscal years thereafter.~~

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

352 § 2.2-1830. Decline in forecasted revenues.

353 In the event that a revised general fund forecast presented to the General Assembly reflects a decline
354 when compared to total general fund revenues appropriated, and the decrease is more than two percent
355 of certified tax revenues collected in the most recently ended fiscal year, the General Assembly may
356 appropriate an amount for transfer from the Fund to the general fund, *and to the Higher Education*
357 *Revenue Stabilization Fund, pursuant § 23-38.87:19*, to stabilize the revenues of the Commonwealth.
358 However, in no event shall the transfer exceed more than one-half of the forecasted shortfall in
359 revenues.

360 § 2.2-2007. Powers of the CIO.

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

362 1. Monitor trends and advances in information technology; develop a comprehensive, statewide,

two-year strategic plan for information technology to include: (i) specific projects that implement the plan; (ii) a plan for the acquisition, management, and use of information technology by state agencies; and (iii) a report of the progress of any ongoing enterprise application projects, any factors or risks that might affect their successful completion, and any changes to their projected implementation costs and schedules. The statewide plan shall be updated annually and submitted to the Secretary for approval.

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 Secretary.

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 *developed pursuant to subdivision B 5 of § 23-38.87.23*, 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 major information technology projects. The CIO shall provide technical guidance to the Department of General Services in the development of policies and procedures for the recycling and disposal of computers and other technology assets. Such policies and procedures shall include the expunging, in a manner as determined by the CIO, of all state confidential data and personal identifying information of citizens of the Commonwealth prior to such sale, disposal, or other transfer of computers or other technology assets.

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. Have the authority to enter into contracts, and with the approval of the Secretary of Technology for any contracts over \$1 million, with one or more other public bodies, or public agencies or institutions or localities of the several states, of the United States or its territories, or the District of Columbia for the provision of information technology services.

9. Report annually to the Governor, the Secretary, 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. The CIO shall prepare an annual report for submission to the Secretary, the Information Technology Advisory Council, and the Joint Commission on Technology and Science on a prioritized list of Recommended Technology Investment Projects based upon major information technology projects submitted for approval pursuant to this chapter. As part of this plan, the CIO shall develop and regularly update a methodology for prioritizing projects based upon the allocation

of points to defined criteria. The criteria and their definitions shall be presented in the plan. For each project listed in the plan, the CIO shall indicate the number of points and how they were awarded. For each listed project, the CIO shall also indicate (i) the projected cost of the project for the next three biennia following project implementation; (ii) all projected costs of ongoing operations and maintenance activities; and (iii) whether the project fails to incorporate existing standards for the maintenance, exchange, and security of data. This report shall also include trends in current projected information technology spending by state agencies and at the enterprise level, including spending on projects, operations and maintenance, and payments to VITA.

10. Direct the development of policies and procedures that require VITA to review major information technology projects proposed by state agencies and institutions and recommend to the Secretary whether such projects be approved or disapproved. The CIO shall disapprove major information technology projects that do not conform to the statewide strategic information technology plan or to the individual plans of state agencies or institutions of higher education. For projects that do not meet the definition of major information technology project as defined in § 2.2-2006, the CIO shall develop criteria and requirements defining whether such projects are subject to the provisions of this subdivision.

11. Oversee the Commonwealth's efforts to modernize the planning, development, implementation, improvement, and retirement of Commonwealth applications, including the coordination and development of enterprise-wide or multiagency applications.

12. Develop and recommend to the Secretary statewide technical and data standards for information technology and related systems, including the utilization of nationally recognized technical and data standards for health information technology systems or software purchased by a state agency of the Commonwealth.

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, the Secretary, 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.

C. The CIO shall strive to follow acceptable technology investment methods, such as Information Technology Investment Management (ITIM) principles developed by the United States Government Accountability Office, to ensure that all technology expenditures are an integral part of the Commonwealth's performance management system and are aligned with (i) agency strategic business objectives, (ii) the Governor's policy objectives, and (iii) the long-term objectives of the Council on Virginia's Future.

D. Subject to review and approval by the Secretary, the CIO shall have the authority to enter into and amend contracts for the provision of information technology services.

§ 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 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 developed pursuant to subdivision B 5 of § 23-38.87.23.

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

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

"Fiscal year of implementation" means the first full fiscal year for which the financial and administrative management and educational-related performance benchmarks described under § 23-9.6:1.04 are effective, as provided in a general appropriation act.

Beginning with the 2013-2014 fiscal year that immediately follows the fiscal year of implementation and for all fiscal years thereafter, 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 § 23-9.6:1.04 as having met the institutional performance benchmarks for public institutions of higher education and (ii) meets the conditions prescribed in subsection B of § 23-38.8823-38.87:24, shall receive the following financial benefits:

1. Interest 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, as provided in the appropriation act. Such 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 the end of each fiscal year, or as soon thereafter as practicable;

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

3. A pro rata amount of the 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, as provided in the appropriation act, shall pay the institution by August 15, or as soon thereafter as practicable, 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.

4. A rebate of any transaction fees for the prior fiscal year paid for sole source procurements made by the institution in accordance with subsection E of § 2.2-4303, for using a vendor who is not registered with the Department of General Service's web-based electronic procurement program commonly known as "eVA", as provided in the appropriation act. Such rebate shall be certified by the Department of General Services and paid to each public institution by August 15, or as soon thereafter as practicable, of the fiscal year immediately following the year of certification.

§ 23-9.2:3. Power of governing body of educational institution to establish rules and regulations; offenses occurring on property of institution; state direct student financial assistance; release of educational records.

A. In addition to the powers now enjoyed by it, the board of visitors or other governing body of every educational institution shall have the power:

1. To establish rules and regulations for the acceptance and assistance of students except that (i) individuals who have failed to meet the federal requirement to register for the selective service shall not be eligible to receive any state direct student assistance; (ii) the accreditation status of a Virginia public

high school shall not be considered in making admissions determinations for students who have earned a diploma pursuant to the requirements established by the Board of Education; and (iii) the governing boards of the four-year institutions shall establish policies providing for the admission of certain graduates of Virginia community colleges as set forth in § 23-9.2:3.02 23-38.87:18.

2. To establish rules and regulations for the conduct of students while attending such institution.

3. To establish programs, in cooperation with the State Council of Higher Education and the Office of the Attorney General, to promote compliance among students with the Commonwealth's laws relating to the use of alcoholic beverages.

4. To establish rules and regulations for the rescission or restriction of financial aid, within the discretionary authority provided to the institution by federal or state law and regulations, and the suspension and dismissal of students who fail or refuse to abide by such rules and regulations for the conduct of students.

5. To establish rules and regulations for the employment of professors, teachers, instructors and all other employees and provide for their dismissal for failure to abide by such rules and regulations.

6. To provide parking and traffic rules and regulations on property owned by such institution.

7. To establish guidelines for the initiation or induction into any social fraternity or sorority in accordance with § 18.2-56.

8. To establish programs, in cooperation with the State Council of Higher Education for Virginia and the Office of the Attorney General, to promote the awareness and prevention of sexual crimes committed upon students.

B. Upon receipt of an appropriate resolution of the board of visitors or other governing body of an educational institution, the governing body of a political subdivision which is contiguous to the institution shall enforce state statutes and local ordinances with respect to offenses occurring on the property of the institution.

The governing bodies of the public institutions of higher education shall assist the State Council of Higher Education in enforcing the provisions related to eligibility for financial aid.

C. Notwithstanding any other provision of state law, the board of visitors or other governing body of every public institution of higher education in Virginia shall establish policies and procedures requiring the notification of the parent of a dependent student when such student receives mental health treatment at the institution's student health or counseling center and such treatment becomes part of the student's educational record in accordance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such notification shall only be required if it is determined that there exists a substantial likelihood that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. However, notification may be withheld if the student's treating physician or treating clinical psychologist has made a part of the student's record a written statement that, in the exercise of his professional judgment, the notification would be reasonably likely to cause substantial harm to the student or another person. No public institution of higher education or employee of a public institution of higher education making a disclosure pursuant to this subsection shall be civilly liable for any harm resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct by the institution or its employees.

D. The board of visitors or other governing body of every public institution of higher education in Virginia shall establish policies and procedures requiring the release of the educational record of a dependent student, as defined by 20 U.S.C. § 1232g, to a parent at his request.

E. In order to improve the quality of the Commonwealth's work force and educational programs, the governing bodies of the public institutions of higher education shall establish programs to seek to ensure that all graduates have the technology skills necessary to compete in the 21st Century and, particularly, that all students matriculating in teacher-training programs receive instruction in the effective use of educational technology.

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

In addition to such other duties as may be prescribed elsewhere, the State Council of Higher Education shall:

1. Develop a statewide strategic plan that reflects the goals set forth in subsection B of § 23-38.88 developed pursuant to subdivision B 5 of § 23-38.87:23 for higher education in the Commonwealth, identifies a coordinated approach to such state and regional goals, and emphasizes the future needs for higher education in Virginia at both the undergraduate and the graduate levels, as well as the mission, programs, facilities and location of each of the existing institutions of higher education, each public institution's six-year plan, and such other matters as the Council deems appropriate. The Council shall revise such plans at least once every six years and shall submit such recommendations as are necessary

for the implementation of the plan to the Governor and the General Assembly.

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

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

4. Review and approve or disapprove all enrollment projections proposed by each public institution of higher education. The Council's projections shall be in numerical terms by level of enrollment and shall be used for budgetary and fiscal planning purposes only. The Council shall develop estimates of the number of degrees to be awarded by each institution and include those estimates in its reports of enrollment projections. The student admissions policies for the institutions and their specific programs shall remain the sole responsibility of the individual boards of visitors; however, all four-year institutions shall adopt dual admissions policies with the community colleges, as required by § ~~23-9.2:3.02~~ 23-38.87:18.

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

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

7. Review and approve or disapprove the creation and establishment of any department, school, college, branch, division or extension of any public institution of higher education that such 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. 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. 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. When consistent with the Government Data Collection and Dissemination Practices Act, the Virginia Unemployment Compensation Act, and applicable federal law, the Council, acting solely or in partnership with the Virginia Department of Education or the Virginia Employment Commission, may contract with private entities to create de-identified student records for the purpose of assessing the performance of institutions and specific programs relative to the workforce needs of the Commonwealth. For the purposes of this section, "de-identified student records" means records in which all personally

670 identifiable information has been removed.

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

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

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

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

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

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

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

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

709 18. Require the development and submission of articulation, transfer, and dual enrollment and
710 admissions agreements between two- and four-year public institutions of higher education in Virginia,
711 including programs for qualified students to be simultaneously accepted by a community college and a
712 four-year public institution of higher education and, upon successful completion of an associate degree
713 program from the community college, to be automatically enrolled in the four-year institution of higher
714 education. Dual admissions agreements shall set forth (i) the obligations of the students accepted in such
715 programs, including grade point average requirements, acceptable associate degree majors, and
716 completion timetables; and (ii) the student's access to the privileges of enrollment in both institutions
717 during the time enrolled in either institution. Such agreements shall be subject to the admissions
718 requirements of the four-year institutions, except as provided in ~~§ 23-9.2:3.02~~ 23-38.87:18.

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

721 20. Develop a uniform certificate of general studies program, in consultation with the Virginia
722 Community College System and Virginia public institutions of higher education, to be offered at each
723 community college in Virginia. Such program shall ensure that a community college student who
724 completes the one-year certificate program shall be able to transfer all credits to a four-year public
725 institution of higher education in the Commonwealth upon acceptance to the institution.

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

730 § 23-9.14:2. State Transfer Module.

731 A. The Council shall develop, in cooperation with the governing boards of the public two- and

four-year institutions of higher education, a State Transfer Module that designates those general education courses that are offered within various associate degree programs at the public two-year institutions that are transferable for credit or admission with standing as a junior (third year) to the public four-year institutions.

In developing such Module, the Council shall also seek the participation of private institutions of higher education in the Commonwealth.

B. The Council shall also require the development and implementation of articulation, transfer, and dual enrollment and admissions agreements between the Commonwealth's public two- and four-year institutions of higher education, including agreements to establish dual admissions programs for qualified students to be simultaneously accepted by a community college and a four-year public institution of higher education and, upon successful completion of an associate degree program from the community college, to be automatically enrolled in the four-year institution of higher education. Dual admissions agreements shall set forth (i) the obligations of the students accepted in such programs, including grade point average requirements, acceptable associate degree majors, and completion timetables; and (ii) the student's access to the privileges of enrollment in both institutions during the time enrolled in either institution. Such agreements shall be subject to the admissions requirements of the four-year institutions. The Council shall require the public two- and four-year institutions of higher education to develop and implement such agreements, in accordance with the guidelines for articulation, transfer, and dual enrollment and admissions agreements required by § ~~23-9.2-3.02~~ 23-38.87:18.

C. The Council shall develop and make available to the public information identifying (i) all general education courses offered at public two-year institutions and designating those that are accepted for purposes of transfer for course credit at four-year public and private institutions of higher education in Virginia; and (ii) those two- and four-year public institutions that have entered into articulation, transfer, and dual enrollment and admissions agreements as required by § ~~23-9.2-3.02~~ 23-38.87:18.

CHAPTER 4.9:1.

THE VIRGINIA HIGHER EDUCATION OPPORTUNITY ACT OF 2011.

§ 23-38.87:10. Short title; purpose.

This chapter may be cited as the "Preparing for the Top Jobs of the 21st Century: The Virginia Higher Education Opportunity Act of 2011," the "Top Jobs Act," or "TJ21." The objective of this chapter is to fuel strong economic growth in the Commonwealth and prepare Virginians for the top job opportunities in the knowledge-driven economy of the 21st Century by establishing a long-term commitment, policy, and framework for sustained investment and innovation that will enable the Commonwealth to build upon the strengths of its excellent higher education system and achieve national and international leadership in college degree attainment and personal income, and that will ensure these educational and economic opportunities are accessible and affordable for all capable and committed Virginia students.

In furtherance of this the objective, the following purposes shall inform the development and implementation of funding policies, performance criteria, economic opportunity metrics, and recommendations required by this chapter:

1. To ensure an educated workforce in Virginia through a public-private higher education system whose hallmarks are instructional excellence, affordable access, economic impact, institutional diversity and managerial autonomy, cost-efficient operation, technological and pedagogical innovation, and reform-based investment;

2. To take optimal advantage of the demonstrated correlation between higher education and economic growth by investing in a manner that will generate economic growth, job creation, personal income growth, and revenues generated for state and local government in Virginia;

3. To place Virginia among the most highly educated states and countries by conferring approximately 100,000 cumulative additional undergraduate degrees on Virginians by 2025, accompanied by a comparable increase in privately conferred Virginia undergraduate degrees over the same period, and to achieve these targets by expanding enrollment of Virginians at public and private higher education institutions in the Commonwealth, improving undergraduate graduation and retention rates in the Virginia higher education system, and increasing degree completion by Virginians with partial credit toward a college degree, including students with ongoing job and family commitments who need access to nontraditional college-level educational opportunities;

4. To enhance personal opportunity and earning power for individual Virginians by increasing college degree attainment in the Commonwealth, especially in high-demand, high-income fields such as science, technology, engineering, mathematics, and healthcare, and by providing information about the economic value and impact of individual degree programs by institution;

5. To promote university-based research that produces outside investment in Virginia, fuels economic advances, triggers commercialization of new products and processes, fosters the formation of new businesses, leads businesses to bring their facilities and jobs to Virginia, and in other ways helps place

793 *the Commonwealth on the leading edge in the knowledge-driven economy;*

794 6. To support the national effort to enhance the security and economic competitiveness of the United
795 States of America, and to secure a leading economic position for the Commonwealth of Virginia,
796 through increased research and instruction in science, technology, engineering, mathematics, and related
797 fields, which require qualified faculty, appropriate research facilities and equipment, public-private and
798 intergovernmental collaboration, and sustained state support;

799 7. To preserve and enhance the Virginia higher education system's excellence and cost-efficiency
800 through reform-based investment that promotes innovative instructional models and pathways to degree
801 attainment, including optimal use of physical facilities and instructional resources throughout the year,
802 technology-enhanced instruction, sharing of instructional resources between and among colleges,
803 universities, and other degree-granting entities in the Commonwealth, increased online learning
804 opportunities for nontraditional students, improved rate and pace of degree completion, expanded
805 availability of dual enrollment and advanced placement options and early college commitment programs,
806 expanded community-college transfer options leading to bachelor's degree completion, and enhanced
807 college readiness before matriculation, among other reforms;

808 8. To realize the potential for enhanced benefits from The Restructured Higher Education Financial
809 and Administrative Operations Act of 2005 (§ 23-38.88 et seq.), through a sustained commitment to the
810 principles of autonomy, accountability, affordable access, and mutual trust and obligation underlying the
811 restructuring initiative; and

812 9. To establish a higher education funding framework and policy that promotes stable, predictable,
813 equitable, and adequate funding, facilitates effective planning at the institutional and state levels,
814 provides incentives for increased enrollment of Virginia students at public and private non profit
815 colleges and universities in the Commonwealth, provides adequate need-based financial aid for low- and
816 middle-income students and families, relieves the upward pressure on tuition associated with loss of
817 state support due to economic downturns or other causes, and provides financial incentives to promote
818 innovation and enhanced economic opportunity in furtherance of the objective of this chapter.

819 § 23-38.87:11. Definitions.

820 For purposes of this chapter, unless the context clearly requires otherwise:

821 "College degree" means an undergraduate degree from an accredited two-year or four-year public or
822 private institution of higher education.

823 "Cost of education" means the operating funds necessary during a fiscal year to provide educational
824 and general services, other than research and public service, to students attending an institution in that
825 fiscal year.

826 "Council" means the State Council of Higher Education for Virginia.

827 "Educational and general fees" means fees over and above tuition charged for certain educational
828 and general services.

829 "Educational and general services" means services associated with instruction, academic support,
830 student services, institutional support, research, public service, and operation and maintenance of
831 physical plant, with adjustments based on particular state policies related to specific institutional
832 conditions, but does not include services associated with programs and administrative services that are
833 required to be self-supporting or are otherwise supported by funds other than general funds, such as
834 food services, university-owned or university-leased dormitories or other living facilities, athletic
835 programs, and other self-supporting programs.

836 "Enrollment" or "student enrollment" means the number of full-time equivalent students.

837 "Fiscal year" means the period from July 1 of one calendar year to June 30 of the next calendar
838 year.

839 "Institution" or "public institution of higher education" means each two-year and four-year public
840 institution of higher education in the Commonwealth and, in the case of the Virginia Community College
841 System, the system as a whole, not each community college.

842 "Peer institutions" for an institution, means those institutions determined by the Council, in
843 consultation with the institution, the Secretary of Education or his designee, the Director of the
844 Department of Planning and Budget or his designee, and the Chairs of the House Committee on
845 Appropriations and the Senate Committee on Finance or their designees, to be most similar to the
846 institution and therefore to provide a fair comparison in determining what the appropriate and
847 competitive faculty salaries for that institution should be.

848 "STEM" means science, technology, engineering, and mathematics.

849 "Student" means a full-time or part-time undergraduate, graduate, or professional student attending a
850 public institution of higher education and enrolled in a degree program.

851 "Virginia student" means a student who is eligible for in-state tuition pursuant to § 23-7.4.

852 § 23-38.87:12. Higher Education Funding Policy.

853 The funding policy for public institutions of higher education shall be comprised of amounts for each
854 institution from the state general fund, from funds other than the state general fund, or both, for each

fiscal year of a biennium for:

1. Basic operations and instruction, as provided in § 23-38.87:13;
2. Each Virginia undergraduate student actually enrolled at the institution, as provided in § 23-38.87:14;
3. Need-based financial aid, as provided in § 23-38.87:15; and
4. Support for targeted financial incentives that encourage and reward progress toward the policy objectives specified in this chapter, as provided in § 23-38.87:16.

§ 23-38.87:13. Calculation of state general fund share of an institution's basic operations and instruction funding need; cost of education.

A. Following consultation with each institution and the Higher Education Advisory Committee described in § 23-38.87:23, the Council shall calculate each institution's basic operations and instruction funding need as provided in subsection B for each year of the next biennium and shall make that calculation available to the Governor, the General Assembly, and all public institutions of higher education. Each institution's basic operations and instruction funding need, and the Commonwealth's funding split policy by which 67 percent of an institution's cost of education for Virginia students is funded from the state general fund and 33 percent from funds other than the state general fund, shall be taken into account by the Governor during the preparation of his proposed biennial Budget Bill recommending the appropriation act for the next biennium and by the General Assembly in enacting that act. Between these biennial recalculations, an institution's appropriated basic operations and instruction funding may be increased or decreased for (i) an increase or decrease in Virginia undergraduate student enrollment as provided in § 23-38.87:14, (ii) meeting or not meeting targeted financial incentives listed in § 23-38.87:16, and (iii) any other purpose deemed appropriate by the General Assembly.

B. An institution's basic operations and instruction funding need for each fiscal year of the biennium shall be the sum of (i) the institution's cost of education for the total enrollment of students who actually attended that institution during the fiscal year that ended on June 30 of each odd-numbered year, which shall be determined using a cost reimbursement funding policy that consists of a set of formulas for calculating educational cost based on faculty-student ratios by discipline and level, and the educational and general programs of instruction, academic support, student services, institutional support, and operation and maintenance of physical plant, with adjustments to the funding policy based on particular state policies or specific institutional missions or conditions, (ii) the amount required to reach the Commonwealth's faculty salary goal of the 60th percentile of the most recently reported average faculty salaries paid by that institution's peer institutions, and (iii) such other funding for educational and general services as the General Assembly may appropriate.

C. State general funds shall be allocated and appropriated to institutions in a fair and equitable manner such that, to the extent practicable, the percentage of the cost of education for Virginia students enrolled at an institution to be funded from state general funds is the same for each institution. To the extent that the percentages differ among institutions, that fact shall be taken into account as the Governor deems appropriate in his Budget Bill and by the General Assembly as it deems appropriate in the appropriation act.

§ 23-38.87:14. Per student enrollment-based funding.

A. In order to incentivize Virginia undergraduate student enrollment growth at the Commonwealth's public institutions of higher education in furtherance of the increased degree conferral objectives of this chapter, the Governor shall recommend and the General Assembly shall determine and appropriate for distribution to the institutions a per student amount that shall follow each Virginia undergraduate student to the institution in which the student enrolls. Recommendations regarding this Virginia undergraduate student enrollment growth incentive shall be developed and reviewed as provided in subdivision B 1 of § 23-38.87:23.

B. The Governor shall consider and recommend as he deems appropriate and the General Assembly shall consider and provide as it deems appropriate additional general fund appropriations to address the unfunded enrollment growth that occurred between the 2005-2006 fiscal year and the enactment of this chapter.

C. In order to assist the General Assembly in determining the per student amount provided for in subsection A and its relation to the per student amount provided to private non profit institutions of higher education pursuant to the Tuition Assistance Grant Act, § 23-38.11 et seq., each private non profit institution of higher education eligible to participate in the Tuition Assistance Grant Program shall submit to the Council its Virginia student enrollment projections for that fiscal year and its actual Virginia student enrollment for the prior fiscal year in a manner determined by the Council. The student admissions policies for the private institutions and their specific programs shall remain the sole responsibility of the governing boards of the individual institutions.

§ 23-38.87:15. Need-based financial aid.

916 Each institution shall include in its six-year plan required by § 23-38.87:17 an institutional student
917 financial aid commitment that, in conjunction with general funds appropriated for that purpose, provides
918 assistance to students from both low- and middle-income families. Each institution's six-year plan
919 required by § 23-38.87:17 shall take into account the information and recommendations resulting from
920 the review of federal and state financial aid programs and institutional practices conducted pursuant to
921 subdivisions B 2 and C 4 of § 23-38.87:23. The definitions of "low-income family" and "middle-income
922 family" shall be developed and reviewed pursuant to subdivision B 2 of § 23-38.87:23.

923 § 23-38.87:16. Targeted economic and innovation incentives.

924 A. The Governor shall consider and may recommend and the General Assembly shall consider and
925 may fund targeted economic and innovation incentives to achieve the purposes of this chapter. Such
926 incentives may include, but are not limited to:

927 1. Increased enrollment of Virginia students, in addition to the per student funding provided by
928 § 23-38.87:14;

929 2. Increased degree completion for Virginia residents who have partial credit completion for a
930 degree;

931 3. Increased degree completion in a timely or expedited manner;

932 4. Improved retention and graduation rates;

933 5. Increased degree production in the areas of science, technology, engineering, and mathematics
934 and other high-need areas such as the health care-related professions;

935 6. Increased research, including regional and public-private collaboration;

936 7. Optimal year-round utilization of resources and other efficiency reforms;

937 8. Technology-enhanced instruction, including course redesign, online instruction, and resource
938 sharing among institutions;

939 9. Enhanced community college transfer programs and grants and other enhanced degree path
940 programs; and

941 10. Other incentives based on the economic opportunity metrics developed pursuant to subdivision B
942 4 of § 23-38.87:23.

943 Nothing in this section shall prohibit incentives in furtherance of the purposes of this chapter from
944 being provided to private institutions of higher education in the Commonwealth.

945 B. The criteria for measuring whether the incentives in subsection A have been met, and the benefits
946 or consequences for meeting or not meeting such incentives, shall be developed and reviewed as
947 provided in subdivisions B 3 and B 4 of § 23-38.87:23.

948 § 23-38.87:17. Institutional Six-Year Plans.

949 A. The governing board of each public institution of higher education shall develop and adopt
950 biennially and affirm annually a six-year plan for the institution and shall submit that plan to the
951 Council, the Governor, and the chairs of the House Committee on Appropriations and the Senate
952 Committee on Finance no later than July 1 of each odd-numbered year, and shall submit amendments to
953 or an affirmation of that plan no later than July 1 of each even-numbered year or at any other time
954 permitted by the Governor or General Assembly. The Council, the Governor or his designee, and the
955 Chairs of the House Committee on Appropriations and the Senate Committee on Finance or their
956 designees shall review each institution's plan or amendments and provide comments to the institution on
957 that plan by September 1 of the relevant year. Each institution shall respond to any such comments by
958 October 1 of that year.

959 B. Each plan shall be structured in accordance with, and be consistent with, the purposes of this
960 chapter set forth in § 23-38.87:10 and the criteria developed pursuant to § 23-38.87:23, and shall be in
961 a form and manner prescribed by the Council, in consultation with the Higher Education Advisory
962 Committee described in § 28-38.87:23.

963 C. Each plan shall address the institution's academic, financial, and enrollment plans, to include the
964 number of Virginia and out-of-state students, for the six-year period and shall include:

965 1. Financial planning reflecting the institution's anticipated level of general fund, tuition, and other
966 nongeneral fund support for each year of the next biennium. The plan also shall include the institution's
967 anticipated annual tuition and educational and general fee charges required by (i) degree level and (ii)
968 domiciliary status, as provided in § 23-38.87:21, and shall indicate the planned use of any projected
969 increase in general fund, tuition, or other nongeneral fund revenues. The plan shall be based upon any
970 assumptions provided by the Council, following consultation with the Department of Planning and
971 Budget and the staffs of the House Committee on Appropriations and the Senate Committee on Finance,
972 for funding related to state general fund support pursuant to §§ 23-38.87:13, 23-38.87:14, 23-38.87:15,
973 and 23-38.87:16, and shall be aligned with the institution's six-year enrollment projections;

974 2. Plans for providing sufficient financial aid to mitigate the impact of tuition and fee increases on
975 low- and middle-income students and their families as described in § 23-38.87:15, including the
976 projected mix of grants and loans;

977 3. Degree conferral targets for Virginia undergraduate students;

4. Plans for optimal year-round use of the institution's facilities and instructional resources;
 5. Plans for the development of an instructional resource sharing program with other institutions of higher education in the Commonwealth;

6. Plans with regard to any other incentives set forth in § 23-38.87:16 or to any other matters the institution deems appropriate; and

7. The identification of (i) proposed new programs or initiatives, and (ii) institution-specific funding based on particular state policies or institution-specific programs, or both, as provided in subsection C of § 23-38.87:21.

D. In developing such plans, each public institution of higher education shall give consideration to potential future impacts of tuition increases on the Virginia College Savings Plan (§ 23-38.75 et seq.) and shall discuss such potential impacts with the Virginia College Savings Plan. The chief executive officer of the Virginia College Savings Plan shall provide to each institution the Plan's assumptions underlying the contract pricing of the program.

§ 23-38.87:18. Articulation, transfer, and dual enrollment and admissions agreements; admission of certain community college graduates.

A. The governing board of each four-year public institution of higher education shall develop, consistent with Council guidelines and the institution's six-year plan as set forth in § 23-38.87:17, articulation, transfer, and dual enrollment and admissions agreements with uniform application to all institutions within the Virginia Community College System and any two-year public institution of higher education that (i) meet appropriate general education and program requirements at the four-year institutions; (ii) provide additional opportunities for associate degree graduates to be admitted and enrolled; and (iii) establish dual admissions programs for qualified students to be simultaneously accepted by a community college and, contingent upon the successful completion of an acceptable associate degree program from the community college, by the four-year public institution of higher education.

B. A Uniform Certificate of General Studies shall be developed by the Council, the Virginia Community College System, and the public institutions of higher education as set forth in subdivision 20 of § 23-9.6:1. All credits earned by students attending a two-year college who complete an approved one-year certificate of general studies program shall be transferable to a four-year public institution of higher education in accord with Council guidelines. Credits earned by high school students who earn a transfer associate degree from a Virginia community college while completing high school shall be transferable to the four-year public institution of higher education to which they have been admitted.

C. The Council shall submit an annual report to the Senate Committee on Education and Health and the House Committee on Education specifying the total number of transfer students each institution of higher education admitted, enrolled, and graduated from institutions within the Virginia Community College System.

D. Students enrolling at an institution within the Virginia Community College System or a two-year public institution of higher education may declare an intention in writing to transfer to a four-year public institution of higher education in Virginia having an articulation agreement with the relevant community college or two-year public institution. If a student (i) completes an associate degree within four years of submitting a written declaration of intent to transfer to a four-year public institution of higher education in Virginia and (ii) enrolls in such an institution within 18 months of completing an associate degree, the articulation agreement in force at the time of the student's declaration shall determine those credits that will be transferred from the community college or two-year public institution to the four-year public institution upon successful completion of an associate degree.

E. Nothing in this section shall be construed to require the admission of students of the Virginia Community College System by a four-year public institution of higher education.

F. The Council, consistent with its responsibility to facilitate the development of articulation, transfer, and dual enrollment and admissions agreements set forth in §§ 23-9.6:1 and 23-9.14:2, shall develop guidelines for such agreements, including the conditions required to establish dual admissions programs for qualified students to be simultaneously accepted by a community college and a four-year public institution of higher education and, upon successful completion of an acceptable associate degree program from the community college, to be automatically enrolled in the four-year institution of higher education. Dual admissions agreements shall set forth (i) the obligations of the students accepted in such programs, including grade point average requirements, acceptable associate degree majors, and completion timetables; and (ii) the student's access to the privileges of enrollment in both institutions during the time enrolled in either institution.

§ 23-38.87:19. Creation of Higher Education Revenue Stabilization Fund; deposits; withdrawals.

A. There is hereby established a fund to be known as the Higher Education Revenue Stabilization Fund (the "Higher Education Fund"), as a subfund of the Revenue Stabilization Fund established pursuant to Article X, Section 8 of the Constitution of Virginia and implemented pursuant to Article 4

1039 (§ 2.2-1828, et. seq.) of Chapter 18 of Title 2.2 for the stabilization of appropriations to institutions of
1040 higher education in the Commonwealth. The Higher Education Fund shall consist of a designated
1041 portion, not to exceed 10 percent, of the Revenue Stabilization Fund. For purposes of this section,
1042 higher education appropriations shall include general fund appropriations for educational and general
1043 services, student financial assistance, research, grants pursuant to the Tuition Assistance Grant Act
1044 (§ 23-38.11 et seq.), and the College Scholarship Assistance Act (§ 23-38.45 et seq.), and general fund
1045 appropriations for higher education centers and institutes that are not part of a public institution of
1046 higher education.

1047 B. The Higher Education Fund shall be established on the books of the Comptroller. Whenever funds
1048 are deposited into the Revenue Stabilization Fund as required by law, the General Assembly shall
1049 apportion 10 percent of such amount to be deposited into the Higher Education Fund. Additional
1050 appropriations may be made for deposit to the Higher Education Fund at any time as long as the 10
1051 percent limitation established under subsection A is not exceeded. Interest earned on moneys in the
1052 Higher Education Fund shall remain in the Higher Education Fund and be credited to it, provided, that
1053 if the Higher Education Fund's balance exceeds such limitation, the amount in excess of the limitation
1054 shall be returned to the Revenue Stabilization Fund.

1055 C. When withdrawals are authorized from the Revenue Stabilization Fund, the General Assembly
1056 may appropriate from the Higher Education Fund to public institutions of higher education, and to
1057 private nonprofit institutions of higher education for Tuition Assistance Grant Program purposes, a total
1058 amount not to exceed 25 percent of its balance or cause the Revenue Stabilization Fund to drop below
1059 its mandated minimum, to be distributed to the individual institutions according to the proportions set
1060 forth in the appropriation act for the relevant fiscal year, with consideration given to the proportionate
1061 share of any general fund reduction each institution has realized during that fiscal year. The existence
1062 of the Higher Education Fund or appropriations therefrom shall not affect the general fund
1063 appropriations that otherwise would be provided to institutions of higher education, collectively, or
1064 individually.

1065 § 23-38.87:20. Carry forward nongeneral funds; institutional revenue stabilization funds.

1066 A. Each institution is hereby authorized to carry forward to the next fiscal year and spend at its
1067 discretion for approved programs and services any unexpended nongeneral fund educational and
1068 general balances from its prior year's appropriation.

1069 B. Each public institution of higher education may designate a percentage of any tuition and
1070 education and general fees it carries forward, and any general funds it is permitted to carry forward,
1071 from one fiscal year to another to be set aside in an institutional revenue stabilization fund; provided,
1072 however, that an institution may not increase tuition and educational and general fees for the purpose
1073 of funding its institutional revenue stabilization fund. The institution may spend funds from this fund
1074 when the actual state general fund appropriation to the institution in a particular fiscal year is less than
1075 the projected state general fund appropriation for that fiscal year included in the institution's six-year
1076 plan. Funds from the institution's revenue stabilization fund may be allocated to programs and services
1077 described in § 23-38.87:13, 23-38.87:15, or 23-38.87:16, but the total of such allocated funds shall not
1078 exceed the difference between the actual state general fund appropriation to the institution in a
1079 particular fiscal year and the state general fund appropriation for that fiscal year included in the
1080 institution's six-year plan. The total for that fiscal year of such allocated funds, plus the actual general
1081 fund appropriation, plus tuition and other educational and general fees shall not exceed the institution's
1082 cost of education for that fiscal year.

1083 § 23-38.87:21. Tuition and fees.

1084 A. The board of visitors of each of the Commonwealth's public institutions of higher education, or in
1085 the case of the Virginia Community College System the State Board for Community Colleges, shall
1086 continue to fix, revise from time to time, charge and collect tuition, fees, rates, rentals, and other
1087 charges for the services, goods, or facilities furnished by or on behalf of such institution, and may adopt
1088 policies regarding any such service rendered or the use, occupancy, or operation of any such facility.

1089 B. Except to the extent included in the institution's six-year plan as provided in subsection C, if the
1090 total of an institution's tuition and educational and general fees for a fiscal year for Virginia students
1091 exceeds the difference for that fiscal year between (i) the institution's cost of education for all students,
1092 as calculated pursuant to clause (i) of subsection B of § 23-38.87:13, and (ii) the sum of the tuition and
1093 educational and general fees for non-Virginia students, the state general funds appropriated for its basic
1094 operations and instruction pursuant to subsection A of § 23-38.87:13, and its per student funding
1095 provided pursuant to § 23-38.87:14, the institution shall forego state funding, in an amount to be
1096 determined by the General Assembly, and shall be obligated to provide increased financial aid to
1097 maintain affordability for students from low- and middle-income families. This limitation shall not apply
1098 to any portion of tuition and educational and general fees for Virginia students allocated to student
1099 financial aid, to an institution's share of state-mandated salary or fringe benefit increases, to increases
1100 with funds other than state general funds for the improvement of faculty salary competitiveness above

the level included in the calculation in clause (i) of subsection B of § 23-38.87:13, or to the institution's share of any of the targeted financial incentives described in § 23-38.87:16.

C. Nothing in subsection B shall prohibit an institution from proposing in its six-year plan required by § 23-38.87:17 (i) new programs or initiatives, or (ii) institution-specific funding based on particular state policies or institution-specific programs, or both, that will cause the total of the institution's tuition and educational and general fees for a fiscal year for Virginia students to exceed the difference for that fiscal year between (a) the institution's cost of education for all students, as calculated pursuant to clause (i) of subsection B of § 23-38.87:13, and (b) the sum of the tuition and educational and general fees for the institution's non-Virginia students, the state general funds appropriated for its basic operations and instruction pursuant to subsection A of § 23-38.87:13, and its per student funding provided pursuant to § 23-38.87:14.

§ 23-38.87:22. Creation of STEM Public-Private Partnership; duties and responsibilities.

In order to increase the number of students completing degrees in the high-demand, high-impact fields of science, technology, engineering, and mathematics (STEM), and other high-demand, anticipated-shortage fields such as the health care-related professions, and to help develop and guide the implementation of a comprehensive plan for higher degree attainment in these fields, the Secretaries of Education and Finance, in cooperation with the House Committees on Appropriations and Education and the Senate Committees on Finance and Education and Health, shall cause to be formed a public-private partnership comprised of private-sector leaders, distinguished representatives from the scientific community (including retired military personnel, government scientists, and researchers), educational experts, relevant state and local government officials, and others as they deem appropriate. The partnership shall advise on, and may collaborate with public and private entities to develop and implement strategies to address, such priority issues as (i) determining the need for additional high-demand degree enrollment, capacity, and resources at the Commonwealth's public and private institutions of higher education; (ii) incentivizing greater coordination, innovation, and private collaboration in kindergarten through secondary school STEM and other high-demand degree initiatives; (iii) determining and refining best practices in STEM instruction and leveraging those best practices to promote STEM education in both the Commonwealth's higher education institutions and its elementary and secondary schools; (iv) enhancing teacher education and professional development in STEM disciplines; (v) strengthening mathematics readiness in secondary schools through earlier diagnosis and remediation of deficiencies; (vi) providing financial incentives to increase STEM enrollment and degree production at the Commonwealth's public and private colleges and universities; (vii) providing assistance to the Commonwealth's public and private colleges and universities in the acquisition and improvement of STEM-related facilities and equipment; (viii) providing STEM incentives in early college and university pathway programs and in the community college transfer grant program; (ix) assessing degree programs using such economic opportunity metrics as marketplace demand, earning potential, employer satisfaction, and other indicators of the historical and projected economic value and impact of degrees to provide useful information on degrees to students as they make career choices and to state policy-makers and university decision-makers as they decide how to allocate scarce resources; (x) aligning state higher education efforts with marketplace demands; and (xi) determining such other issues as the partnership deems relevant to increasing the number of students completing college and university degrees in the STEM and other high-demand fields.

§ 23-38.87:23. Creation of Higher Education Advisory Committee; duties and responsibilities.

A. The Secretary of Education, in consultation with the Chairs of the House Committee on Appropriations and the Senate Committee on Finance, the Secretary of Finance and the public institutions of higher education in the Commonwealth, shall convene an Advisory Committee to provide advice and make recommendations on the matters set forth in subsections B, C and D. The Advisory Committee shall include a representative from the Office of the Secretary of Education, who shall serve as chair; representatives from the House Committee on Appropriations, the Senate Committee on Finance, the Office of the Secretary of Finance, the Department of Planning and Budget, and the Council; the chief financial officers of several of the public institutions of higher education; a representative of a private non profit institution of higher education in the Commonwealth; and such other persons as the Advisory Committee may designate.

B. Consistent with the objectives of this chapter identified in § 23-38.87:10, the Advisory Committee, with assistance from the staff of the Council and such other assistance it may need, shall develop and review at least every five years, in consultation with the respective Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and on Education and Health, or their designees, representatives of public institutions of higher education in the Commonwealth, and such other state officials as may be designated by the Governor:

1. The methodology pursuant to subsection A of § 23-38.87:14 for determining how a significant increment of state funding shall follow the student to the two-year or four-year institution in which the

student enrolls, how the amount of such per student funding for four-year institutions will be made to correspond as nearly as practical to the per student allocation envisioned under the then-existing appropriation for the Tuition Assistance Grant Act, Chapter 4.1 (§ 23-38.11 et seq.) for students attending private non profit higher education institutions in the Commonwealth, how and as of what date an institution's student enrollment shall be calculated, how an increase or decrease in Virginia undergraduate student enrollment above or below the enrollment level used to calculate the institution's funding under § 23-38.87:13 shall be reflected in the institution's appropriation pursuant to subsection A of § 23-38.87:14, and the standards and process for determining whether an increase or decrease in Virginia undergraduate student enrollment qualifies for funding under § 23-38.87:14;

2. Criteria for determining which families qualify as "low-income" and "middle-income" for purposes of § 23-38.87:15 and how they relate to federal, state and institutional policies governing the provision of financial assistance to students of such families;

3. Objective performance criteria for measuring the financial incentives set forth in § 23-38.87:16, and benefits or consequences for meeting or not meeting the incentives included in an institution's six-year plan pursuant to § 23-38.87:17;

4. Economic opportunity metrics, such as marketplace demand, earning potential, and employer satisfaction, and other indicators of the historical and projected economic value of degrees that can be used to assess degree programs in order to provide useful information on the economic impact of degrees to students as they make career choices and to state policymakers and university decision-makers as they decide how to allocate scarce resources; and

5. The additional authority that should be granted to all public institutions of higher education under the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.), state goals and objectives each public institution of higher education should be expected to achieve, objective criteria for measuring educational-related performance with regard to those goals and objectives, and the benefits or consequences for meeting or not meeting those goals and objectives, including those set forth in § 2.2-5005.

The Advisory Committee shall submit its recommendations to the Council, which shall review the recommendations and provide its recommendations to the Governor, who shall submit to the General Assembly any recommendations he deems appropriate.

C. Consistent with the purposes of this chapter identified in § 23-38.87:10, the Advisory Committee, with assistance from the staff of the Council and such other assistance as it may need, shall review at least every five years, in consultation with the respective Chairs of the House Committees on Appropriation and Education and the Senate Committees on Finance and on Education and Health, or their designees, representatives of public institutions of higher education in the Commonwealth, and such other state officials as may be designated by the Governor:

1. The elements of the funding policy used in the calculation described in § 23-38.87:13;

2. The factors used in selecting peer institutions for public institutions of higher education;

3. The particular state policies and specific institutional conditions that are used to adjust an institution's cost of education as provided in clause (i) of subsection B of § 23-38.87:13, and the new programs or initiatives, or institution-specific funding based on particular state policies or institution-specific programs or policies, that may be included in an institution's six-year plan as provided in subdivision C 7 of § 23-38.87:17;

4. Federal and state financial aid programs and institutional practices to ensure that the appropriate level of financial assistance is being provided to both low-income and middle-income families, as required by § 23-38.87:15, including loan forgiveness programs targeted by purpose in furtherance of the objective of this chapter;

5. The content of the institutional six-year plans required by subsection C of § 23-38.87:17; and

6. The Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 (§ 23-38.88 et seq.) to identify additional ways to reduce costs and enhance efficiency by increasing managerial autonomy with accountability at the institutional level.

The Advisory Committee shall submit its recommendations to the Council, which shall review the recommendations and provide its recommendations to the Governor, who shall submit to the General Assembly any recommendations he deems appropriate.

D. The Advisory Committee shall periodically assess, based upon the institutions' six-year plans and other relevant factors, the degree to which the Commonwealth's system of higher education is meeting the statewide objectives of economic impact, reform, affordability, and access reflected in this chapter, as well as the strategic impact of new general fund investments on achieving those objectives. The Advisory Committee shall submit its assessment and recommendations to the Council, which shall review the assessment and recommendations and provide its recommendations to the Governor as required by the Governor, who shall submit to the General Assembly any recommendations he deems appropriate.

E. In addition to providing advice and making recommendations on the matters set forth in subsections B, C and D, the Advisory Committee shall perform such other duties and undertake such

other responsibilities as requested by the Governor or the General Assembly.

§ 23-38.87:24. Certification by Council.

The Council shall annually assess the degree to which each institution has satisfied any goals or criteria developed by the Advisory Committee pursuant to § 23-38.87:23, by no later than October 1 of each fiscal year and shall provide a certified written report of the results of such annual assessment to the Governor and the Chairs of the House Committees on Appropriations and Education and the Senate Committees on Finance and Education and Health. In order to assist the Council in its assessment, each public institution, and each private institution eligible for and seeking to qualify for state general funds, shall furnish periodic reports and other pertinent information, including student-level data, as may be required by the Council. The reports shall include, but not be limited to, copies of institutional financial aid audit reports and audited financial statements.

§ 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. To have the option, as provided in subsection C of § 2.2-1132 and pursuant to the conditions and provisions under such subsection, to contract with a building official of the locality in which construction is taking place and for such official to perform any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) pursuant to subsection C of § 36-98.1;

3. 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 preliminary review and approval of the Division of Engineering and Buildings of the Department of General Services, provided such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and utilize the general terms and conditions for those forms of procurement approved by the Division and the Office of the Attorney General;

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

5. To enter into an operating/income lease or capital lease pursuant to the conditions and provisions provided in subdivision 5 of § 2.2-1149;

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

7. In accordance with the conditions and provisions of subdivision C 2 of § 2.2-1153, to sell surplus real property valued at less than \$5 million, which is possessed and controlled by the institution;

8. For purposes of compliance with § 2.2-4310, to procure goods, services, and construction from a vendor that the institution has certified as a small, women-, and minority-owned business enterprise pursuant to the conditions and provisions provided in § 2.2-1404.1;

9. To be exempt from review of their budget request for information technology by the CIO as provided in subdivision A 4 of § 2.2-2007;

10. To be allowed to establish policies for the designation of administrative and professional faculty positions at the institution pursuant to the conditions and provisions provided in subsection E of § 2.2-2901;

11. To receive the financial benefits described under § 2.2-5005 pursuant to the conditions and provisions of such section;

12. To be exempt from reporting its purchases to the Secretary of Education, provided that all purchases, including sole source purchases, are placed through the Commonwealth's electronic procurement system using proper system codes for the methods of procurement;

13. To utilize as methods of procurement a fixed price, design-build or construction management contract notwithstanding the provisions of § 2.2-4306; 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. State goals and objectives to be achieved by public institutions of higher education shall be developed as provided in subdivision B 5 of § 23-38.87:23. 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. Each such institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is met;

2. Consistent with § 23-9.2:3.03, 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 and assess 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;

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. Improve student retention such that students progress from initial enrollment to a timely graduation, and that the number of degrees conferred increases as enrollment increases;

6. Consistent with its institutional 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, provide additional opportunities for associate degree graduates to be admitted and enrolled, and offer dual enrollment programs in cooperation with high schools;

7. Actively contribute to efforts to stimulate the economic development of the Commonwealth and the area in which the institution is located, and for those institutions subject to a management agreement set forth in Subchapter 3 (§ 23-38.91 et seq.) of this chapter, in areas that lag the Commonwealth in terms of income, employment, and other factors;

8. Consistent with its institutional mission, increase the level of externally funded research conducted at the institution and facilitate the transfer of technology from university research centers to private sector companies;

9. Work actively and cooperatively with elementary and secondary school administrators, teachers, and students in public schools and school divisions to improve student achievement, upgrade the knowledge and skills of teachers, and strengthen leadership skills of school administrators;

10. Prepare a six-year financial plan consistent with § 23-9.2:3.03;

11. Conduct the institution's business affairs in a manner that maximizes operational efficiencies and economies for the institution, contributes to maximum efficiencies and economies of state government as a whole, and meets the financial and administrative management standards as specified by the Governor pursuant to § 2-2-5004 and included in the appropriation act that is in effect, which shall include best practices for electronic procurement and leveraged purchasing, information technology, real estate portfolio management, and diversity of suppliers through fair and reasonable consideration of small, women-, and minority-owned business enterprises; and

12. Seek to ensure the safety and security of the Commonwealth's students on college and university campuses.

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.

C. Objective criteria for measuring performance with regard to the state goals and objectives developed pursuant to subsection B, and benefits or consequences for meeting or not meeting those goals and objectives shall be developed as provided in subdivision B 5 of § 23-38.87:23. As provided in § 23-9.6:1.01, the State Council of Higher Education shall 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, develop objective measures of educational-related performance and institutional performance benchmarks for such objective measures. At a minimum, the State Council shall develop such objective measures and institutional performance benchmarks for the goals and objectives set forth in subdivisions B 1 through B 10 and B 12. In addition, the Governor shall develop objective measures of financial and administrative management performance and related institutional performance benchmarks for the goals and objectives set forth in subdivision B 11.

As provided in subsection C of § 23-9.6:1.01, any public institution of higher education that has been certified during the fiscal year by the State Council of Higher Education for Virginia as meeting the

institutional performance benchmarks in effect for the fiscal year as set forth in the general appropriation act shall be provided the financial benefits under § 2.2-5005. Such benefits shall first be provided as determined under such section.

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

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

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

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

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

c. The institution agrees to reimburse the Commonwealth for any additional costs to the Commonwealth in providing health or other group insurance benefits to employees, and in undertaking any risk management program, that are attributable to the institution's exercise of any restructured financial or operational authority set forth in Subchapter 3. The institution's agreement to reimburse the Commonwealth for such additional costs shall be expressly included in each management agreement with the institution. The Secretary of Finance and the Secretary of Administration, in consultation with the Virginia Retirement System and the affected institutions, shall establish procedures for determining any amounts to be paid by each institution and a mechanism for transferring the appropriate amounts directly and solely to the programs whose costs have been affected.

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

d. Before executing a management agreement with the Commonwealth that affects insurance or benefit programs administered by the Virginia Retirement System, the Governor shall transmit a draft of the relevant provisions to the Board of Trustees of the Virginia Retirement System, which shall review the relevant provisions in order to ensure compliance with the applicable provisions of Title 51.1, administrative policies and procedures and federal regulations governing retirement plans. The Board shall advise the Governor and appropriate Cabinet Secretaries of any conflicts.

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

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

1408 The Joint Legislative Audit and Review Commission, in cooperation with the Auditor of Public
1409 Accounts, shall conduct a review relating to the initial management agreement with each public
1410 institution of higher education. The review shall cover a period of at least the first 24 months from the
1411 effective date of the management agreement. The review shall include, but shall not be limited to, the
1412 degree of compliance with the expressed terms of the management agreement, the degree to which the
1413 institution has demonstrated its ability to manage successfully the administrative and financial operations
1414 of the institution without jeopardizing the financial integrity and stability of the institution, the degree to
1415 which the institution is meeting the objectives described in subsection B, and any related impact on
1416 students and employees of the institution from execution of the management agreement. The Joint
1417 Legislative Audit and Review Commission shall make a written report of its review no later than June
1418 30 of the third year of the management agreement. The Joint Legislative Audit and Review Commission
1419 is authorized, but not required, to conduct a similar review of any management agreement entered into
1420 subsequent to the initial agreement.

1421 4. The right and power by the Governor to void a management agreement shall be expressly included
1422 in each management agreement. The management agreement shall provide that if the Governor makes a
1423 written determination that a public institution of higher education that has entered into a management
1424 agreement with the Commonwealth is not in substantial compliance with the terms of the agreement or
1425 with the requirements of this chapter in general, (i) the Governor shall provide a copy of that written
1426 determination to the chairmen of the Board of Visitors or other governing body of the public institution
1427 of higher education and to the members of the General Assembly, and (ii) the institution shall develop
1428 and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into
1429 substantial compliance with the terms of the management agreement and with the requirements of this
1430 chapter, as soon as practicable, and shall provide a copy of such corrective action plan to the members
1431 of the General Assembly. If after a reasonable period of time after the corrective action plan has been
1432 implemented by the institution, the Governor determines that the institution is not yet in substantial
1433 compliance with the management agreement or the requirements of this chapter, the Governor may void
1434 the management agreement. Upon the Governor voiding a management agreement, the affected public
1435 institution of higher education shall not be allowed to exercise any restructured financial or operational
1436 authority pursuant to the provisions of Subchapter 3 (§ 23-38.91 et seq.) unless and until the institution
1437 enters into a subsequent management agreement with the Secretary or Secretaries designated by the
1438 Governor or the void management agreement is reinstated by the General Assembly.

1439 5. A management agreement with a public institution of higher education shall not grant any of the
1440 restructured financial or operational authority set forth in Subchapter 3 (§ 23-38.91 et seq.) of this
1441 chapter to the Virginia Cooperative Extension and Agricultural Experiment Station, the University of
1442 Virginia College at Wise, or the Virginia Institute of Marine Sciences or to an affiliated entity of the
1443 institution unless such intent, as well as the degree of the restructured financial or operational authority
1444 to be granted, is expressly included in the management agreement.

1445 6. Following the execution of each management agreement with a public institution of higher
1446 education and submission of that management agreement to the Chairmen of the House Committee on
1447 Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate
1448 Committee on Education and Health pursuant to § 23-38.97, the Governor shall include a
1449 recommendation for approval of the management agreement in "The Budget Bill" submitted pursuant to
1450 subsection A of § 2.2-1509 or in his gubernatorial amendments submitted pursuant to subsection E of
1451 § 2.2-1509 due by the December 20 that immediately follows the date of submission of the management
1452 agreement to such Committees. Following the General Assembly's consideration of whether to approve
1453 or disapprove the management agreement as recommended, if the management agreement is approved as
1454 part of the general appropriation act, it shall become effective on the effective date of such general
1455 appropriation act. However, no management agreement shall be entered into by a public institution of
1456 higher education and the Secretary or Secretaries designated by the Governor after November 15 of a
1457 calendar year.

1458 E. A covered institution and the members of its governing body, officers, directors, employees, and
1459 agents shall be entitled to the same sovereign immunity to which they would be entitled if the institution
1460 were not governed by this chapter; provided further, that the Virginia Tort Claims Act (§ 8.01-195.1 et
1461 seq.) and its limitations on recoveries shall remain applicable with respect to institutions governed by
1462 this chapter.

1463 § 23-38.90. Memoranda of understanding.

1464 Effective July 1, 2008, any public institution of higher education may enter into a memorandum of
1465 understanding with the appropriate Cabinet Secretary or Secretaries, as designated by the Governor, for
1466 additional operational authority in any operational area or areas adopted by the General Assembly in
1467 accordance with law provided that the authority granted in the memorandum of understanding is
1468 consistent with that institution's ability to manage its operations in the particular area or areas and
1469 provided that the following general criteria are met:

1. The institution has received and maintained Council certification pursuant to § ~~23-9.6:1.01~~ 23-38.87:24 for the most recent year that the Council has completed certification;

2. An absolute two-thirds or more of the institution's governing body shall have voted in the affirmative for a resolution expressing the sense of the body that the institution is qualified to be, and should be, governed by memoranda of understanding as provided in this chapter; and

3. The institution must adopt at least one new education-related measure for each area of operational authority for which a memorandum of understanding is requested. Each education-related measure and its respective target shall be developed in consultation with the Secretary of Finance, Secretary of Education, the appropriate Cabinet Secretary, and the Council. Each education-related measure and its respective target must be approved by the Council and shall become part of the certification required by § ~~23-9.6:1.01~~ 23-38.87:24.

Within 15 days of receipt of a request from a public institution of higher education to enter into a memorandum of understanding as provided herein, the Cabinet Secretary or Secretaries receiving that request shall notify the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance of the request. The Cabinet Secretary or Secretaries shall determine within 90 calendar days whether or not to enter into the requested memorandum of understanding, or some variation thereof. If the determination is to enter into a memorandum of understanding with the institution, the Cabinet Secretary or Secretaries shall forward a copy of the governing body's resolution and a copy of the memorandum of understanding to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance. Each initial memorandum of understanding shall remain in effect for a period of three years. Subsequent memoranda of understanding shall remain in effect for a period of five years. 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 section shall prohibit the institution from submitting a future request to enter into a memorandum of understanding pursuant to this section.

§ 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 (a) the management of the institution of higher education as provided in this subchapter, (b) meeting the requirements of §§ 2.2-5004, ~~23-9.2:3.03~~ 23-38.87:17, and ~~23-9.6:1.01~~ 23-38.87:24, and (c) 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.

§ 23-38.93. 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, ~~23-9.2:3.03~~, 23-9.2:3.1 through 23-9.2:5, ~~23-9.6:1.01~~, and Chapter 4.9 (§ 23-38.75 et seq.), 23-38.87:17, and 23-38.87:24 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 effective date of the initial Management Agreement 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 continue to treat hospitals that were part of a covered institution and that were Type One Hospitals prior to the institution's effective date of the initial Management Agreement as Type One Hospitals for purposes of such reimbursement.

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

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

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

2. Following such affirmative vote by such governing body, the institution shall submit to the Governor a written request for his approval to be governed by this subchapter. A copy of such request shall be sent 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. Such written request shall provide documentation substantiating that: (i) the institution possesses the necessary administrative infrastructure, experience, and expertise to perform successfully its public educational mission as a covered institution; (ii) the institution is financially able to operate as a covered institution without jeopardizing the financial integrity and stability of the institution; (iii) the institution consistently meets the financial and administrative management standards pursuant to § 2.2-5004; and (iv) the institution's governing body has adopted performance and accountability standards, in addition to any institutional performance benchmarks included in the general appropriation act and developed pursuant to § 23-9.6-1.01, against which its implementation of this additional authority can be measured.

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

C. Any such management agreement, executed by the designated Cabinet Secretaries and governing body of the institution shall be submitted by no later than November 15 of any given year to the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health. The Governor shall include a recommendation for approval of the management agreement with the public institution of higher education 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 due by the December 20 that immediately follows the date of submission of the management agreement to such Committees. Following the General Assembly's consideration of whether to approve or disapprove the management agreement as recommended, if the management agreement is approved as part of the general appropriation act, it shall become effective on the effective date of such general appropriation act.

§ 36-98.1. State buildings; exception for certain assets owned by the Department of Transportation.

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

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

Acting through the Division of Engineering and Buildings, the Department of General Services shall function as the building official for any state-owned buildings or structures and for all buildings and structures built on state-owned property. The Department shall review and approve plans and specifications, grant modifications, and establish such rules and regulations as may be necessary to implement this section. It may provide for the (i) inspection of state-owned buildings or structures and for all buildings and structures built on state-owned property and (ii) enforcement of the Building Code and standards for access by the physically handicapped by delegating inspection and Building Code enforcement duties to the State Fire Marshal's Office, to other appropriate state agencies having needed expertise, and to local building departments, all of which shall provide such assistance within a reasonable time and in the manner requested. State agencies and institutions occupying buildings shall pay to the local building department the same fees as would be paid by a private citizen for the services

rendered when such services are requested by the Department of General Services. The Department of General Services may alter or overrule any decision of the local building department after having first considered the local building department's report or other rationale given for its decision. When altering or overruling any decision of a local building department, the Department of General Services shall provide the local building department with a written summary of its reasons for doing so.

B. Notwithstanding the provisions of subsection A and § 27-99, roadway tunnels and bridges owned by the Department of Transportation shall be exempt from the Building Code and the Statewide Fire Prevention Code Act (§ 27-94 et seq.). The Department of General Services shall not have jurisdiction over such roadway tunnels, bridges, and other limited access highways; provided, however, that the Department of General Services shall have jurisdiction over any occupied buildings within any Department of Transportation rights-of-way that are subject to the Building Code.

Roadway tunnels and bridges shall be designed, constructed, and operated to comply with fire safety standards based on nationally recognized model codes and standards to be developed by the Department of Transportation in consultation with the State Fire Marshal and approved by the Commonwealth Transportation Board. Emergency response planning and activities related to the standards approved by the Commonwealth Transportation Board shall be developed by the Department of Transportation and coordinated with the appropriate local officials and emergency services providers. On an annual basis the Department of Transportation shall provide a report on the maintenance and operability of installed fire protection and detection systems in roadway tunnels and bridges to the State Fire Marshal.

C. Except as provided in subsection D of § 23-38.109, and notwithstanding the provisions of subsection A, at the request of a public institution of higher education, the Department, as further set forth in this subsection, shall authorize that institution of higher education to contract with a building official of the locality in which the construction is taking place to perform any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.). The Department shall publish administrative procedures that shall be followed in contracting with a building official of the locality. The authority granted to a public institution of higher education under this subsection to contract with a building official of the locality shall be subject to the institution meeting the conditions prescribed in subsection B of § 23-38.88 developed pursuant to subdivision B 5 of § 23-38.87:23.

D. This section shall not apply to the nonhabitable structures, equipment, and wiring owned by a public service company, a certificated provider of telecommunications services, or a franchised cable operator that are built on rights-of-way owned or controlled by the Commonwealth Transportation Board.

2. That, unless specified to the contrary in the appropriation act, the funding policy referenced in subsection B of § 23-38.87:13 of the Code of Virginia is intended to be the model that was adopted by the Joint Subcommittee on Higher Education Funding Policies, as amended.

3. That, notwithstanding the language of § 23-9.6:1.01 of the Code of Virginia as it existed prior to the effective date of this act, the institutional plan due in 2011 shall be due on July 1, 2011. To the extent that the requirements of § 23-38.87:17 of the Code of Virginia differ from § 23-9.6:1.01, the requirements for the plan due on July 1, 2011 shall be set forth in the 2011 amendments to the appropriation act. To the extent that such requirements are not so addressed, the Governor may, in consultation with the Chairmen of the House Committees on Appropriations and Education and the Senate Committees on Finance and Education and Health, modify, delay, or suspend some or all of the requirements for the plan due on July 1, 2011.

4. That any certification received during 2011 by a public institution of higher education from the State Council of Higher Education for Virginia pursuant to § 23-9.6:1.01 of the Code of Virginia, as it existed prior to the effective date of this act, shall be valid until June 30, 2013, and that any institution so certified may receive the financial benefits provided by § 2.2-5005 of the Code of Virginia for the 2011-2012 and 2012-2013 fiscal years.

5. That §§ 23-9.2:3.02, 23-9.2:3.03, and 23-9.6:1.01 of the Code of Virginia are repealed.