

# VIRGINIA ACTS OF ASSEMBLY -- 2013 SESSION

## CHAPTER 438

*An Act to amend and reenact § 23-38.90 of the Code of Virginia, relating to public institutions of higher education; memoranda of understanding.*

[H 2057]

Approved March 16, 2013

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

**1. That § 23-38.90 of the Code of Virginia is amended and reenacted as follows:**

**§ 23-38.90. Memoranda of understanding.**

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

1. The institution has received and maintained Council certification (i) pursuant to § 23-9.6:1.01, or (ii) upon the completion of the development of the objective criteria for measuring goals and objectives described in subdivision B 5 of § 23-38.87:20, pursuant to § 23-38.87:21 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;

3. The institution shall 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. If the adopted measure is education-related, then it shall be developed in consultation with the Secretary of Education and the Council. Each~~ Any education-related measure and its ~~respective target~~ shall be approved by the Council and shall become part of the certification (i) required by § 23-9.6:1.01, or (ii) upon the completion of the development of the objective criteria for measuring goals and objectives described in subdivision B 5 of § 23-38.87:20, pursuant to § 23-38.87:21; and

4. The institution shall post on the Department of General Services' central electronic procurement website all Invitations to Bid, Requests for Proposal, sole source award notices, and emergency award notices to ensure visibility and access to the Commonwealth's procurement opportunities on one website.

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~~ *in this section*, 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.