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**SENATE BILL NO. 912**

Offered January 9, 2013

Prefiled January 7, 2013

*A BILL to amend and reenact Exhibit G of the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, relating to the management agreement between the Commonwealth and the College of William and Mary; responsibilities of the Building Official.*

Patron—Ruff

Referred to Committee on Finance

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

**1. That Exhibit G of the second enactment of Chapters 933 and 943 of the Acts of Assembly of 2006, as amended by Chapters 675 and 685 of the Acts of Assembly of 2009, is amended and reenacted as follows:**

EXHIBIT G  
MANAGEMENT AGREEMENT  
BETWEEN  
THE COMMONWEALTH OF VIRGINIA  
AND  
THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA  
PURSUANT TO  
THE RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS  
ACT OF 2005  
POLICY GOVERNING CAPITAL PROJECTS  
THE RECTOR AND VISITORS OF  
THE COLLEGE OF WILLIAM AND MARY IN VIRGINIA  
POLICY GOVERNING CAPITAL PROJECTS

**I. PREAMBLE.**

The Restructured Higher Education Financial and Administrative Operations Act (the Act), Chapter 4.10 of Title 23 of the Code of Virginia, provides that, upon becoming a Covered Institution, the College of William and Mary in Virginia may be delegated the authority to establish its own system for undertaking the implementation of its capital projects. In general, status as a Covered Institution is designed to replace the post-authorization system of reviews, approvals, policies and procedures carried out by a variety of central State agencies, and also the traditional pre-authorization approval process for projects funded entirely with non-general funds and without any proceeds from State Tax Supported Debt. The College's system for carrying out its capital outlay process as a Covered Institution is to be governed by policies adopted by the Board of Visitors. The following provisions of this Policy, together with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy, constitute the adopted Board of Visitors policies regarding the College's capital projects, whether funded by a state general fund appropriation, State Tax Supported Debt, or funding from other sources.

This Policy is intended to encompass and implement the authority that may be granted to the College pursuant to Subchapter 3 of the Act. Any other powers and authorities granted to the College pursuant to the Appropriation Act, or any other sections of the Code of Virginia, including other provisions of the Act and the College's Enabling Legislation, are not affected by this Policy.

**II. DEFINITIONS.**

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

"Act" means the Restructured Higher Education Financial and Administrative Operations Act, Chapter 4.10 of Title 23 of the Code of Virginia.

"Board of Visitors" or "Board" means the Rector and Visitors of the College of William and Mary in Virginia.

"Capital Lease" means a lease that is defined as such within Generally Accepted Accounting Principles pursuant to the pronouncement of the Financial Accounting Standards Board.

"Capital Professional Services" means professional engineering, architecture, land surveying and

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59 landscape architecture services related to capital projects.

60 "Capital project(s)" means the acquisition of any interest in land, including improvements on the  
61 acquired land at the time of acquisition, new construction, improvements or renovations, and Capital  
62 Leases.

63 "College" means the College of William and Mary in Virginia, (State Agency 204), and the Virginia  
64 Institute of Marine Science, (State Agency 268).

65 "Covered Institution" means, on and after the Effective Date of its initial Management Agreement, a  
66 public institution of higher education of the Commonwealth of Virginia that has entered into a  
67 management agreement with the Commonwealth to be governed by the provisions of Subchapter 3 of  
68 the Act.

69 "Enabling Legislation" means those chapters, other than Chapter 4.10, of Title 23 of the Code of  
70 Virginia, as amended, creating, continuing, or otherwise setting forth the powers, purposes, and missions  
71 of the individual public institutions of higher education of the Commonwealth, and as provided in  
72 §§ 2.2-2817.2, 2.2-2905, and 51.1-126.3.

73 "Major Capital Project(s)" means the acquisition of any interest in land, including improvements on  
74 the acquired land at the time of acquisition, new construction of 5,000 square feet or greater or costing  
75 \$1 million or more, improvements or renovations of \$1 million or more, and Capital Leases.

76 "State Tax Supported Debt" means bonds, notes or other obligations issued under Article X, Section  
77 9(a), 9(b), or 9(c), or 9(d), if the debt service payments are made or ultimately are to be made from  
78 general government funds, as defined in the December 20, 2004 Report to the Governor and General  
79 Assembly of the Debt Capacity Advisory Committee or as that definition is amended from time to time.

### 80 III. SCOPE OF POLICY.

81 This Policy applies to the planning and budget development for capital projects, capital project  
82 authorization, and the implementation of capital projects, whether funded by a general fund  
83 appropriation of the General Assembly, proceeds from State Tax Supported Debt, or funding from other  
84 sources.

85 This Policy provides guidance for 1) the process for developing one or more capital project programs  
86 for the College, 2) authorization of new capital projects, 3) procurement of Capital Professional Services  
87 and construction services, 4) design reviews and code approvals for capital projects, 5) environmental  
88 impact requirements, 6) building demolitions, 7) building and land acquisitions, 8) building and land  
89 dispositions, 9) project management systems, and 10) reporting requirements.

### 90 IV. BOARD OF VISITORS ACCOUNTABILITY AND DELEGATION OF AUTHORITY.

91 The Board of Visitors of the College shall at all times be fully and ultimately accountable for the  
92 proper fulfillment of the duties and responsibilities set forth in, and for the appropriate implementation  
93 of, this Policy. Consistent with this full and ultimate accountability, however, the Board may, pursuant  
94 to its legally permissible procedures, specifically delegate either herein or by separate Board resolution  
95 the duties and responsibilities set forth in this Policy to a person or persons within the College, who,  
96 while continuing to be fully accountable for such duties and responsibilities, may further delegate the  
97 implementation of those duties and responsibilities pursuant to the College's usual delegation policies  
98 and procedures.

### 99 V. CAPITAL PROGRAM.

100 The President shall adopt a system for developing one or more capital project programs that defines  
101 or define the capital needs of the College for a given period of time consistent with the College's  
102 published Master Plan. This process may or may not mirror the Commonwealth's requirements for  
103 capital plans. The Board of Visitors shall approve the program for Major Capital Projects. Major Capital  
104 Projects that are to be funded entirely or in part by a general fund appropriation of the General  
105 Assembly or proceeds from State Tax Supported Debt shall follow the Commonwealth's requirements  
106 for capital plans. The Board may approve amendments to the program for Major Capital Projects  
107 annually or more often if circumstances warrant.

108 It shall be College policy that each capital project program shall meet the College's mission and  
109 institutional objectives, and be appropriately authorized by the College. Moreover, it shall be College  
110 policy that each capital project shall be of a size and scope to provide for the defined program needs,  
111 designed in accordance with all applicable building codes and handicapped accessibility standards as  
112 well as the College's design guidelines and standards, and costed to reflect current costs and escalated to  
113 the mid-point of anticipated construction.

### 114 VI. AUTHORIZATION OF CAPITAL PROJECTS.

115 The Board of Visitors shall authorize the initiation of each Major Capital Project by approving its  
116 size, scope, budget, and funding. The President, acting through his designee, shall adopt procedures for  
117 approving the size, scope, budget and funding of all other capital projects. Major Capital Projects that  
118 are to be funded entirely or in part by a general fund appropriation of the General Assembly or proceeds  
119 from State Tax Supported Debt, shall require both Board of Visitors approval and those  
120 pre-appropriation approvals of the State's governmental agencies then applicable, and shall follow the

State's process for capital budget requests.

It shall be the policy of the College that the implementation of capital projects shall be carried out so that the capital project as completed is the capital project approved by the Board for Major Capital Projects and according to the procedures adopted by the President, acting through his designee, for all other capital projects. The President shall ensure strict adherence to this requirement.

Accordingly, the budget, size and scope of a capital project shall not be materially changed beyond the plans and justifications that were the basis for the capital project's approval, either before or during construction, unless approved in advance as described above. Minor changes shall be permissible if they are determined by the President, acting through his designee, to be justified.

Major Capital Projects may be submitted for Board of Visitors authorization at any time but must include a statement of urgency if not part of the approved Major Capital Project program.

## VII. PROCUREMENT OF CAPITAL PROFESSIONAL SERVICES AND CONSTRUCTION SERVICES.

It shall be the policy of the College that procurements shall result in the purchase of high quality services and construction at reasonable prices and shall be consistent with the Policy Governing the Procurement of Goods, Services, Insurance, and Construction, and the Disposition of Surplus Materials adopted by the Board, and with the Rules Governing Procurement of Goods, Services, Insurance, and Construction, which is attached as Attachment 1 to that Policy. Specifically, the College is committed to:

Seeking competition to the maximum practical degree, taking into account the size of the anticipated procurement, the term of the resulting contract and the likely extent of competition;

Conducting all procurements in a fair and impartial manner and avoiding any impropriety or the appearance of any impropriety prohibited by State law or College policy;

Making procurement rules clear in advance of any competition;

Providing access to the College's business to all qualified vendors, firms and contractors, with no potential bidder or offeror excluded arbitrarily or capriciously, while allowing the flexibility to engage in cooperative procurements and to meet special needs of the College;

Including in contracts of more than \$10,000 the contractor's agreement not to discriminate against employees or applicants because of race, religion, color, sex, national origin, age, disability or other basis prohibited by State law except where there is a bona fide occupational qualification reasonably necessary to the contractor's normal operations;

Providing for a non-discriminatory procurement process, and including appropriate and lawful provisions to effectuate fair and reasonable consideration of women-owned, minority-owned and small businesses and to promote and encourage a diversity of suppliers.

The President, acting through his designee, is authorized to develop implementing procedures for the procurement of Capital Professional Services and construction services at the College. The procedures shall implement this Policy and provide for:

A system of competitive negotiation for Capital Professional Services, including a procedure for expedited procurement of Capital Professional Services under \$50,000, pursuant to (i) subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" in Rule 4 of the Rules Governing Procurement of Goods, Services, Insurance, and Construction, and (ii) § 4-5.06 of the 2004-2006 Appropriation Act;

A prequalification procedure for contractors or products;

A procedure for special construction contracting methods, including but not limited to design-build and construction management contracts; and

A prompt payment procedure.

The College also may enter into cooperative arrangements with other private or public health or educational institutions, healthcare provider alliances, purchasing organizations or state agencies where, in the judgment of the College, the purposes of this Policy will be furthered.

## VIII. DESIGN REVIEWS AND CODE APPROVALS.

The Board of Visitors shall review the design of all Major Capital Projects and shall provide final Major Capital Project authorization based on the size, scope and cost estimate provided with the design. Unless stipulated by the Board of Visitors at the design review, no further design reviews shall be required. For all capital projects other than Major Capital Projects, the President, acting through his designee, shall adopt procedures for design review and project authorization based on the size, scope and cost estimate provided with the design. It shall be the College's policy that all capital projects shall be designed and constructed in accordance with applicable Virginia Uniform Statewide Building Code (VUSBC) standards and the applicable accessibility code.

The President shall designate a Building Official responsible for building code compliance at the College, including the Virginia Institute of Marine Science and ~~Richard Bland College~~, by either (i) hiring an individual to be the College Building Official, or (ii) continuing to use the services of the Department of General Services, Division of Engineering and Buildings, to perform the Building Official

function. If option (i) is selected, the individual hired as the College Building Official shall be an employee of the College who has no other assigned duties or responsibilities at the institution and who is not employed by any firm or business providing facility services to the College, a registered professional architect or engineer, and certified by the Department of Housing and Community Development to perform this Building Official function. The College Building Official shall issue building permits for each capital project required by the VUSBC to have a building permit, and shall determine the suitability for occupancy of, and shall issue certifications for building occupancy for, all capital projects requiring such certification. Prior to issuing any such certification, this individual shall ensure that the VUSBC and accessibility requirements are met for that capital project and that such capital project has been inspected by the State Fire Marshal or his designee as required. When serving as the College Building Official, such individual shall organizationally report directly and exclusively to the Board of Visitors. If the College hires its own College Building Official, it shall fulfill the code review requirement by maintaining a review unit of licensed professional architects or engineers who are certified by the Department of Housing and Community Development in accordance with § 36-137 of the Code of Virginia for such purpose and who shall review plans, specifications and documents for compliance with building codes and standards and perform required inspections of work in progress and the completed capital project. No individual licensed professional architect or engineer hired under the College's personnel system as a member of the review unit shall also perform other building code-related design, construction, facilities-related project management or facilities management functions for the College.

#### IX. ENVIRONMENTAL IMPACT REPORTS.

It shall be the policy of the College to assess the environmental, historic preservation, and conservation impacts of all capital projects and to minimize and otherwise mitigate all adverse impacts to the extent practicable. The College shall develop a procedure for the preparation and approval of environmental impact reports for capital projects, in accordance with State environmental, historic preservation, and conservation requirements generally applicable to capital projects otherwise meeting the definition of Major Capital Projects but, pursuant to § 23-38.109 C 1 of the Act, with a cost of \$300,000 or more.

#### X. BUILDING DEMOLITIONS.

It shall be the policy of the College to consider the environmental and historical aspects of any proposed demolitions. The Board of Visitors shall be responsible for approving demolition requests. The College shall develop a procedure for the preparation and review of demolition requests, including any necessary reviews by the Department of Historic Resources and the Art and Architectural Review Board in accordance with State historic preservation requirements generally applicable to capital projects in the Commonwealth. Further, for any property that was acquired or constructed with funding from a general fund appropriation of the General Assembly or from proceeds from State Tax Supported Debt, general laws applicable to State owned property shall apply.

#### XI. BUILDING OR LAND ACQUISITIONS.

It is the policy of the College that capital projects involving building or land acquisition shall be subjected to thorough inquiry and due diligence prior to closing on the acquisition of such real property. The President, acting through his designee, shall ensure that the project management system implemented pursuant to Section XIII below provides for a review and analysis of all pertinent matters relating to the acquisition of buildings and land as any prudent purchaser would perform to the end that any building or land acquired by the College shall be suitable for its intended purpose, that the acquisition can be made without substantial risk of liability to the College and that the cost of the real property to be acquired, together with any contemplated development thereof, shall be such that compliance with the provisions of Section VI of this Policy is achieved. In addition, the President, acting through his designee, shall ensure that, where feasible and appropriate to do so, the following specific policies pertaining to the acquisition of buildings or land for capital projects are carried out.

##### A. Environmental and Land Use Considerations.

It is the policy of the College to reasonably cooperate with each locality affected by the acquisition. Such cooperation shall include but not be limited to furnishing any information that the locality may reasonably request and reviewing any requests by the locality with regard to any such acquisition. The College shall consider the zoning and comprehensive plan designation by the locality of the building or land and surrounding parcels, as well as any designation by State or federal agencies of historically or archeologically significant areas on the land. Nothing herein shall be construed as requiring the College to comply with local zoning laws and ordinances.

##### B. Infrastructure and Site Condition.

The President, acting through his designee, shall ensure that, in the case of capital projects involving the acquisition of buildings or land, the project management systems implemented under Section XIII below provide for a review of the following matters prior to acquisition of the building or land: that any land can be developed for its intended purpose without extraordinary cost; that an environmental

engineer has been engaged by the College to provide an assessment of any environmental conditions on the land; that there is adequate vehicular ingress and egress to serve the contemplated use of the building or land; that utilities and other services to the land are adequate or can reasonably be provided or have been provided in the case of building acquisitions; and that the condition and grade of the soils have been examined to determine if any conditions exist that would require extraordinary site work or foundation systems.

#### C. Title and Survey.

A survey shall be prepared for any real property acquired, and an examination of title to the real property shall be conducted by a licensed attorney or, in the alternative, a commitment for title insurance shall be procured from a title insurance company authorized to do business in the Commonwealth. Based upon the survey and title examination or report, the President, acting through his designee, shall conclude, prior to acquisition of the real property, that title thereto will be conveyed to the College in fee simple, free and clear of all liens, encumbrances, covenants, restrictions, easements or other matters that may have a significant adverse effect upon the College's ability to own, occupy, convey or develop the real property.

#### D. Appraisal.

An appraisal shall be conducted of the real property to be acquired to determine its fair market value and the consistency of the fair market value with the price agreed upon by the College.

### XII. BUILDING OR LAND DISPOSITIONS.

The Board of Visitors shall approve the disposition of any building or land. Disposition of land or buildings, the acquisition or construction of which was funded entirely or in part by a general fund appropriation of the General Assembly or proceeds from State Tax Supported Debt, shall require both Board of Visitors approval and other approvals in accordance with general law applicable to State-owned property and with the College's Enabling Legislation.

### XIII. PROJECT MANAGEMENT SYSTEMS.

The President, acting through his designee, shall implement one or more systems for the management of capital projects for the College. The systems may include the delegation of project management authority to appropriate College officials, including a grant of authority to such officials to engage in further delegation of authority as the President deems appropriate.

The project management systems for capital projects shall be designed to ensure that such projects comply with the provisions of this Policy and other Board of Visitors policies applicable to closely related subjects such as selection of architects or policies applicable to College buildings and grounds.

The project management systems may include one or more reporting systems applicable to capital projects whereby College officials responsible for the management of such projects provide appropriate and timely reports to the President on the status of such projects during construction.

### XIV. REPORTING REQUIREMENTS.

In addition to complying with any internal reporting systems contained in the College's project management systems, as described in Section XIII above, the College shall comply with State reporting requirements for those Major Capital Projects funded entirely or in part by a general fund appropriation by the General Assembly or State Tax Supported Debt. Additionally, if any capital project constructs improvements on land, or renovates property, that originally was acquired or constructed in whole or in part with a general fund appropriation for that purpose or proceeds from State Tax Supported Debt, and such improvements or renovations are undertaken entirely with funds not appropriated by the General Assembly and, if the cost of such improvements or renovations is reasonably expected to exceed \$2 million dollars, the decision to undertake such improvements or renovations shall be communicated as required by § 23-38.109 C 3 of the Act. As a matter of routine, the President, acting through his designee, shall report to the Department of General Services on the status of such capital projects at the initiation of the project, prior to the commencement of construction, and at the time of acceptance of any such capital project.