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HOUSE BILL NO. 1538

House Amendments in [] - January 18, 2017

A *BILL to amend and reenact §§ 13.1-543, 13.1-1102, 23.1-107, 23.1-200, 23.1-201, 23.1-203, 23.1-210, 23.1-227, 23.1-301, 23.1-308, 23.1-634, 23.1-712, 23.1-1004, 23.1-1014, 23.1-1026, 23.1-1211, 23.1-1225, 23.1-1300, 23.1-1303, 23.1-1305, 23.1-2308, 23.1-2404, 23.1-2408, 23.1-2409, 23.1-2413, 23.1-2415, 23.1-2607, 23.1-2631, 23.1-2702, 23.1-2903, 23.1-3131, 23.1-3133, 23.1-3208, 23.1-3216, 23.1-3217, and 25.1-100 of the Code of Virginia, relating to higher education.*

Patron Prior to Engrossment—Delegate LeMunyon

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That §§ 13.1-543, 13.1-1102, 23.1-107, 23.1-200, 23.1-201, 23.1-203, 23.1-210, 23.1-227, 23.1-301, 23.1-308, 23.1-634, 23.1-712, 23.1-1004, 23.1-1014, 23.1-1026, 23.1-1211, 23.1-1225, 23.1-1300, 23.1-1303, 23.1-1305, 23.1-2308, 23.1-2404, 23.1-2408, 23.1-2409, 23.1-2413, 23.1-2415, 23.1-2607, 23.1-2631, 23.1-2702, 23.1-2903, 23.1-3131, 23.1-3133, 23.1-3208, 23.1-3216, 23.1-3217, and 25.1-100 of the Code of Virginia are amended and reenacted as follows:

§ 13.1-543. Definitions.

A. As used in this chapter:

"Eligible employee stock ownership plan" means an employee stock ownership plan as such term is defined in § 4975(e)(7) of the Internal Revenue Code of 1986, as amended, sponsored by a professional corporation and with respect to which:

1. All of the trustees of the employee stock ownership plan are individuals who are duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter; however, if a conflict of interest exists for one or more trustees with respect to a specific issue or transaction, such trustees may appoint a special independent trustee or special fiduciary, who is not duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter, which special independent trustee shall be authorized to make decisions only with respect to the specific issue or transaction that is the subject of the conflict;

2. The employee stock ownership plan provides that no shares, fractional shares, or rights or options to purchase shares of the professional corporation shall at any time be issued, sold, or otherwise transferred directly to anyone other than an individual duly licensed or otherwise legally authorized to render the professional services for which the professional corporation is organized under this chapter, unless such shares are transferred as a plan distribution to a plan beneficiary and subject to immediate repurchase by the professional corporation, the employee stock ownership plan or another person authorized to hold such shares; however:

a. With respect to a professional corporation rendering the professional services of public accounting or certified public accounting:

(1) The employee stock ownership plan may permit individuals who are not duly licensed or otherwise legally authorized to render these services to participate in such plan, provided such individuals are employees of the corporation and hold less than a majority of the beneficial interests in such plan; and

(2) At least 51 percent of the total of allocated and unallocated equity interests in the corporation sponsoring such employee stock ownership plan are held (i) by the trustees of such employee stock ownership plan for the benefit of persons holding a valid CPA certificate as defined in § 54.1-4400, with unallocated shares allocated for these purposes pursuant to § 409(p) of the Internal Revenue Code of 1986, as amended, or (ii) by individual employees holding a valid CPA certificate separate from any interests held by such employee stock ownership plan; and

b. With respect to a professional corporation rendering the professional services of architects, professional engineers, land surveyors, landscape architects, or certified interior designers, the employee stock ownership plan may permit individuals who are not duly licensed to render the services of architects, professional engineers, land surveyors, or landscape architects, or individuals legally authorized to use the title of certified interior designers to participate in such plan, provided such individuals are employees of the corporation and together hold not more than one-third of the beneficial interests in such plan, and that the total of the shares (i) held by individuals who are employees but not duly licensed to render such services or legally authorized to use a title and (ii) held by the trustees of such employee stock ownership plan for the benefit of individuals who are employees but not duly

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59 licensed to render such services or legally authorized to use a title, shall not exceed one-third of the
60 shares of the corporation; and

61 3. The professional corporation, the trustees of the employee stock ownership plan, and the other
62 shareholders of the professional corporation comply with the foregoing provisions of the plan.

63 "Professional business entity" means any entity as defined in § 13.1-603 that is duly licensed or
64 otherwise legally authorized under the laws of the Commonwealth or the laws of the jurisdiction under
65 whose laws the entity is formed to render the same professional service as that for which a professional
66 corporation or professional limited liability company may be organized, including, but not limited to, (i)
67 a professional limited liability company as defined in § 13.1-1102, (ii) a professional corporation as
68 defined in this subsection, or (iii) a partnership that is registered as a registered limited liability
69 partnership registered under § 50-73.132, all of the partners of which are duly licensed or otherwise
70 legally authorized to render the same professional services as those for which the partnership was
71 organized.

72 "Professional corporation" means a corporation whose articles of incorporation set forth a sole and
73 specific purpose permitted by this chapter and that is either (i) organized under this chapter for the sole
74 and specific purpose of rendering professional service other than that of architects, professional
75 engineers, land surveyors, or landscape architects, or using a title other than that of certified interior
76 designers and, except as expressly otherwise permitted by this chapter, that has as its shareholders or
77 members only individuals or professional business entities that are duly licensed or otherwise legally
78 authorized to render the same professional service as the corporation, including the trustees of an
79 eligible employee stock ownership plan or (ii) organized under this chapter for the sole and specific
80 purpose of rendering the professional services of architects, professional engineers, land surveyors, or
81 landscape architects, or using the title of certified interior designers, or any combination thereof, and at
82 least two-thirds of whose shares are held by persons duly licensed within the Commonwealth to perform
83 the services of an architect, professional engineer, land surveyor, or landscape architect, including the
84 trustees of an eligible employee stock ownership plan, or by persons legally authorized within the
85 Commonwealth to use the title of certified interior designer; or (iii) organized under this chapter or
86 under Chapter 10 (§ 13.1-801 et seq.) of this title for the sole and specific purpose of rendering the
87 professional services of one or more practitioners of the healing arts, licensed under the provisions of
88 Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more nurse practitioners, licensed under
89 Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1, or one or more optometrists licensed under the provisions
90 of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, or one or more physical therapists and physical
91 therapist assistants licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or
92 one or more practitioners of the behavioral science professions, licensed under the provisions of Chapter
93 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or
94 more practitioners of audiology or speech pathology, licensed under the provisions of Chapter 26
95 (§ 54.1-2600 et seq.) of Title 54.1, or one or more clinical nurse specialists who render mental health
96 services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of
97 Nursing, or any combination of practitioners of the healing arts, optometry, physical therapy, the
98 behavioral science professions, and audiology or speech pathology, and all of whose shares are held by
99 or all of whose members are individuals or professional business entities duly licensed or otherwise
100 legally authorized to perform the services of a practitioner of the healing arts, nurse practitioners,
101 optometry, physical therapy, the behavioral science professions, audiology or speech pathology or of a
102 clinical nurse specialist who renders mental health services, including the trustees of an eligible
103 employee stock ownership plan; however, nothing herein shall be construed so as to allow any member
104 of the healing arts, optometry, physical therapy, the behavioral science professions, audiology or speech
105 pathology or a nurse practitioner or clinical nurse specialist to conduct his practice in a manner contrary
106 to the standards of ethics of his branch of the healing arts, optometry, physical therapy, the behavioral
107 science professions, audiology or speech pathology, or nursing, as the case may be.

108 "Professional service" means any type of personal service to the public that requires as a condition
109 precedent to the rendering of such service or use of such title the obtaining of a license, certification, or
110 other legal authorization and shall be limited to the personal services rendered by pharmacists,
111 optometrists, physical therapists and physical therapist assistants, practitioners of the healing arts, nurse
112 practitioners, practitioners of the behavioral science professions, veterinarians, surgeons, dentists,
113 architects, professional engineers, land surveyors, landscape architects, certified interior designers, public
114 accountants, certified public accountants, attorneys-at-law, insurance consultants, audiologists or speech
115 pathologists, and clinical nurse specialists. For the purposes of this chapter, the following shall be
116 deemed to be rendering the same professional service:

117 1. Architects, professional engineers, and land surveyors; and

118 2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.)
119 of Title 54.1; nurse practitioners, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.) of
120 Title 54.1; optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1;

121 physical therapists and physical therapist assistants, licensed under the provisions of Chapter 34.1
 122 (§ 54.1-3473 et seq.) of Title 54.1; practitioners of the behavioral science professions, licensed under the
 123 provisions of Chapters 35 (§ 54.1-3500 et seq.), 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of
 124 Title 54.1; and one or more clinical nurse specialists who render mental health services, licensed under
 125 Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and are registered with the Board of Nursing.

126 B. Persons who practice the healing art of performing professional clinical laboratory services within
 127 a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such
 128 persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical
 129 laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university
 130 school that is an "educational institution" within the meaning of as that term is defined in § 23.1-1101
 131 23.1-1100.

132 **§ 13.1-1102. Definitions.**

133 A. As used in this chapter:

134 "Professional business entity" means any entity as defined in § 13.1-603 that is duly licensed or
 135 otherwise legally authorized under the laws of the Commonwealth or the laws of the jurisdiction under
 136 whose laws the entity is formed to render the same professional service as that for which a professional
 137 corporation or professional limited liability company may be organized, including, but not limited to, (i)
 138 a professional limited liability company as defined in this subsection, (ii) a professional corporation as
 139 defined in subsection A of § 13.1-543, or (iii) a partnership that is registered as a registered limited
 140 liability partnership under § 50-73.132, all of the partners of which are duly licensed or otherwise legally
 141 authorized to render the same professional services as those for which the partnership was organized.

142 "Professional limited liability company" means a limited liability company whose articles of
 143 organization set forth a sole and specific purpose permitted by this chapter and that is either (i)
 144 organized under this chapter for the sole and specific purpose of rendering professional service other
 145 than that of architects, professional engineers, land surveyors, or landscape architects, or using a title
 146 other than that of certified interior designers and, except as expressly otherwise permitted by this
 147 chapter, that has as its members only individuals or professional business entities that are duly licensed
 148 or otherwise legally authorized to render the same professional service as the professional limited
 149 liability company or (ii) organized under this chapter for the sole and specific purpose of rendering
 150 professional service of architects, professional engineers, land surveyors, or landscape architects or using
 151 the title of certified interior designers, or any combination thereof, and at least two-thirds of whose
 152 membership interests are held by persons duly licensed within the Commonwealth to perform the
 153 services of an architect, professional engineer, land surveyor, or landscape architect, or by persons
 154 legally authorized within the Commonwealth to use the title of certified interior designer; or (iii)
 155 organized under this chapter for the sole and specific purpose of rendering the professional services of
 156 one or more practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et
 157 seq.) of Title 54.1, or one or more nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.)
 158 of Title 54.1, or one or more optometrists licensed under the provisions of Chapter 32 (§ 54.1-3200 et
 159 seq.) of Title 54.1, or one or more physical therapists and physical therapist assistants licensed under the
 160 provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, or one or more practitioners of the
 161 behavioral science professions, licensed under the provisions of Chapter 35 (§ 54.1-3500 et seq.), 36
 162 (§ 54.1-3600 et seq.) or 37 (§ 54.1-3700 et seq.) of Title 54.1, or one or more practitioners of audiology
 163 or speech pathology, licensed under the provisions of Chapter 26 (§ 54.1-2600 et seq.) of Title 54.1, or
 164 one or more clinical nurse specialists who render mental health services licensed under Chapter 30
 165 (§ 54.1-3000 et seq.) of Title 54.1 and registered with the Board of Nursing, or any combination of
 166 practitioners of the healing arts, of optometry, physical therapy, the behavioral science professions, and
 167 audiology or speech pathology and all of whose members are individuals or professional business
 168 entities duly licensed or otherwise legally authorized to perform the services of a practitioner of the
 169 healing arts, nurse practitioners, optometry, physical therapy, the behavioral science professions,
 170 audiology or speech pathology or of a clinical nurse specialist who renders mental health services;
 171 however, nothing herein shall be construed so as to allow any member of the healing arts, optometry,
 172 physical therapy, the behavioral science professions, audiology or speech pathology or a nurse
 173 practitioner or clinical nurse specialist to conduct that person's practice in a manner contrary to the
 174 standards of ethics of that person's branch of the healing arts, optometry, physical therapy, the
 175 behavioral science professions, or audiology or speech pathology, or nursing as the case may be.

176 "Professional services" means any type of personal service to the public that requires as a condition
 177 precedent to the rendering of that service or the use of that title the obtaining of a license, certification,
 178 or other legal authorization and shall be limited to the personal services rendered by pharmacists,
 179 optometrists, physical therapists and physical therapist assistants, practitioners of the healing arts, nurse
 180 practitioners, practitioners of the behavioral science professions, veterinarians, surgeons, dentists,
 181 architects, professional engineers, land surveyors, landscape architects, certified interior designers, public

182 accountants, certified public accountants, attorneys at law, insurance consultants, audiologists or speech
 183 pathologists and clinical nurse specialists. For the purposes of this chapter, the following shall be
 184 deemed to be rendering the same professional services:

185 1. Architects, professional engineers, and land surveyors; and

186 2. Practitioners of the healing arts, licensed under the provisions of Chapter 29 (§ 54.1-2900 et seq.)
 187 of Title 54.1, nurse practitioners, licensed under Chapter 29 (§ 54.1-2900 et seq.) of Title 54.1,
 188 optometrists, licensed under the provisions of Chapter 32 (§ 54.1-3200 et seq.) of Title 54.1, physical
 189 therapists, licensed under the provisions of Chapter 34.1 (§ 54.1-3473 et seq.) of Title 54.1, practitioners
 190 of the behavioral science professions, licensed under the provisions of Chapters 35 (§ 54.1-3500 et seq.),
 191 36 (§ 54.1-3600 et seq.), and 37 (§ 54.1-3700 et seq.) of Title 54.1, and clinical nurse specialists who
 192 render mental health services licensed under Chapter 30 (§ 54.1-3000 et seq.) of Title 54.1 and
 193 registered with the Board of Nursing.

194 B. Persons who practice the healing art of performing professional clinical laboratory services within
 195 a hospital pathology laboratory shall be legally authorized to do so for purposes of this chapter if such
 196 persons (i) hold a doctorate degree in the biological sciences or a board certification in the clinical
 197 laboratory sciences and (ii) are tenured faculty members of an accredited medical college or university
 198 school that is an "educational institution" within the meaning of as that term is defined in § 23.1-1101
 199 23.1-1100.

200 C. Except as expressly otherwise provided, all terms defined in § 13.1-1002 shall have the same
 201 meanings for purposes of this chapter.

202 **§ 23.1-107. Private institutions of higher education; human research review committees.**

203 The human research review committee at each proprietary private institution of higher education and
 204 nonprofit private institution of higher education that conducts human research, as that term is defined in
 205 § 32.1-162.16, shall submit to the Governor, the General Assembly, and the president of the institution
 206 or his designee at least annually a report on the human research projects reviewed and approved by the
 207 committee and any significant deviations from approved proposals.

208 **§ 23.1-200. State Council of Higher Education for Virginia established; purpose; membership;**
 209 **terms; officers.**

210 A. The State Council of Higher Education for Virginia is established to advocate for and promote the
 211 development and operation of an educationally and economically sound, vigorous, progressive, and
 212 coordinated system of higher education in the Commonwealth and lead state-level strategic planning and
 213 policy development and implementation based on research and analysis and in accordance with
 214 § 23.1-301 and subsection A of § 23.1-1002. The Council shall seek to facilitate collaboration among
 215 institutions of higher education that will enhance quality and create operational efficiencies and work
 216 with institutions of higher education and their governing boards on board development.

217 B. The Council shall be composed of individuals selected from the Commonwealth at large without
 218 regard to political affiliation but with due consideration of geographical representation. Nonlegislative
 219 citizen members shall have demonstrated experience, knowledge, and understanding of higher education
 220 and workforce needs. Nonlegislative citizen members shall be selected for their ability and all
 221 appointments shall be of such nature as to aid the work of the Council and inspire the highest degree of
 222 cooperation and confidence. No officer, employee, trustee, or member of the governing board of any
 223 institution of higher education, employee of the Commonwealth, member of the General Assembly, or
 224 member of the Board of Education is eligible for appointment to the Council except as specified in this
 225 section. All members of the Council are members at large who shall serve the best interests of the
 226 whole Commonwealth. No member shall act as the representative of any particular region or of any
 227 particular institution of higher education.

228 C. The Council shall consist of 13 members: 12 nonlegislative citizen members appointed by the
 229 Governor and one ex officio member. At least one nonlegislative citizen member shall have served as a
 230 president or chief executive officer of a public institution of higher education. At least one nonlegislative
 231 citizen member shall be a division superintendent or the Superintendent of Public Instruction. The
 232 President of the Virginia Economic Development Partnership Authority shall serve ex officio with voting
 233 privileges.

234 D. All terms shall begin July 1.

235 E. Nonlegislative citizen members shall serve for terms of four years. Vacancies occurring other than
 236 by expiration of a term shall be filled for the unexpired term. No nonlegislative citizen member shall
 237 serve for more than two consecutive terms; however, a nonlegislative citizen member appointed to serve
 238 an unexpired term is eligible to serve two consecutive four-year terms. No nonlegislative citizen member
 239 who has served two consecutive four-year terms is eligible to serve on the Council until at least two
 240 years have passed since the end of his second consecutive four-year term. All appointments are subject
 241 to confirmation by the General Assembly. Nonlegislative citizen members shall continue to hold office
 242 until their successors have been appointed and confirmed. Ex officio members shall serve terms
 243 coincident with their terms of office.

244 F. The Council shall elect a chairman and a vice-chairman from its membership. The Council shall
 245 appoint a secretary and such other officers as it deems necessary and prescribe their duties and terms of
 246 office.

247 G. At each meeting, the Council shall involve the chief executive officer of each public institution of
 248 higher education in its agenda. The chief executive officers shall present information and comment on
 249 issues of common interest and choose presenters to the Council from among themselves who reflect the
 250 diversity of the institutions.

251 H. At each meeting, the Council may involve other groups, including the presidents of private
 252 institutions of higher education, in its agenda.

253 **§ 23.1-201. Student advisory committee.**

254 A. The Council shall appoint a student advisory committee consisting of students enrolled in public
 255 *institutions of higher education* and accredited private institutions of higher education whose primary
 256 purpose is to provide collegiate or graduate education and not to provide religious training.
 257 Appointments shall be made in a manner to ensure broad student representation from among such
 258 institutions.

259 B. Members shall serve for terms of one year. Vacancies occurring other than by expiration of a
 260 term shall be filled for the unexpired term. Members may be reappointed to serve subsequent or
 261 consecutive terms.

262 C. The Council shall ensure that at least one member of the student advisory committee is
 263 reappointed each year. The student advisory committee shall elect a chairman from among its members.

264 D. The student advisory committee shall meet at least twice annually and advise the Council
 265 regarding such matters as may come before it.

266 **§ 23.1-203. Duties of Council.**

267 The Council shall:

268 1. Develop a statewide strategic plan that (i) reflects the goals set forth in subsection A of
 269 § 23.1-1002 or (ii) once adopted, reflects the goals and objectives developed pursuant to subdivision B 5
 270 of § 23.1-309 for higher education in the Commonwealth, identifies a coordinated approach to such state
 271 and regional goals, and emphasizes the future needs for higher education in the Commonwealth at both
 272 the undergraduate and the graduate levels and the mission, programs, facilities, and location of each of
 273 the existing institutions of higher education, each public institution's six-year plan, and such other
 274 matters as the Council deems appropriate. The Council shall revise such plan at least once every six
 275 years and shall submit such recommendations as are necessary for the implementation of the plan to the
 276 Governor and the General Assembly.

277 2. Review and approve or disapprove any proposed change in the statement of mission of any public
 278 institution of higher education and define the mission of all newly created public institutions of higher
 279 education. The Council shall report such approvals, disapprovals, and definitions to the Governor and
 280 the General Assembly at least once every six years. No such actions shall become effective until 30
 281 days after adjournment of the session of the General Assembly next following the filing of such a
 282 report. Nothing in this subdivision shall be construed to authorize the Council to modify any mission
 283 statement adopted by the General Assembly or empower the Council to affect, either directly or
 284 indirectly, the selection of faculty or the standards and criteria for admission of any public institution of
 285 higher education, whether relating to academic standards, residence, or other criteria. Faculty selection
 286 and student admission policies shall remain a function of the individual public institutions of higher
 287 education.

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

294 4. Review and approve or disapprove all enrollment projections proposed by each public institution
 295 of higher education. The Council's projections shall be organized numerically by level of enrollment and
 296 shall be used solely for budgetary, fiscal, and strategic planning purposes. The Council shall develop
 297 estimates of the number of degrees to be awarded by each public institution of higher education and
 298 include those estimates in its reports of enrollment projections. The student admissions policies for such
 299 institutions and their specific programs shall remain the sole responsibility of the individual governing
 300 boards but all baccalaureate public institutions of higher education shall adopt dual admissions policies
 301 with comprehensive community colleges as required by § 23.1-907.

302 5. Review and approve or disapprove all new undergraduate or graduate academic programs that any
 303 public institution of higher education proposes.

304 6. Review and require the discontinuance of any undergraduate or graduate academic program that is

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

313 7. Review and approve or disapprove the establishment of any department, school, college, branch,
314 division, or extension of any public institution of higher education that such institution proposes to
315 establish, whether located on or off the main campus of such institution. If any organizational change is
316 determined by the Council to be proposed solely for the purpose of internal management and the
317 institution's curricular offerings remain constant, the Council shall approve the proposed change. Nothing
318 in this subdivision shall be construed to authorize the Council to disapprove the establishment of any
319 such department, school, college, branch, division, or extension established by the General Assembly.

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

323 9. Develop a uniform, comprehensive data information system designed to gather all information
324 necessary to the performance of the Council's duties. The system shall include information on
325 admissions, enrollment, self-identified students with documented disabilities, personnel, programs,
326 financing, space inventory, facilities, and such other areas as the Council deems appropriate. When
327 consistent with the Government Data Collection and Dissemination Practices Act (§ 2.2-3800 et seq.),
328 the Virginia Unemployment Compensation Act (§ 60.2-100 et seq.), and applicable federal law, the
329 Council, acting solely or in partnership with the Virginia Department of Education or the Virginia
330 Employment Commission, may contract with private entities to create de-identified student records in
331 which all personally identifiable information has been removed for the purpose of assessing the
332 performance of institutions and specific programs relative to the workforce needs of the Commonwealth.

333 10. In cooperation with public institutions of higher education, develop guidelines for the assessment
334 of student achievement. Each such institution shall use an approved program that complies with the
335 guidelines of the Council and is consistent with the institution's mission and educational objectives in
336 the development of such assessment. The Council shall report each institution's assessment of student
337 achievement in the revisions to the Commonwealth's statewide strategic plan for higher education.

338 11. In cooperation with the appropriate state financial and accounting officials, develop and establish
339 uniform standards and systems of accounting, recordkeeping, and statistical reporting for public
340 institutions of higher education.

341 12. Review biennially and approve or disapprove all changes in the inventory of educational and
342 general space that any public institution of higher education proposes and report such approvals and
343 disapprovals to the Governor and the General Assembly. No such change shall become effective until 30
344 days after the adjournment of the session of the General Assembly next following the filing of such
345 report.

346 13. Visit and study the operations of each public institution of higher education at such times as the
347 Council deems appropriate and conduct such other studies in the field of higher education as the Council
348 deems appropriate or as may be requested by the Governor or the General Assembly.

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

355 15. Adopt such policies and regulations as the Council deems necessary to implement its duties
356 established by state law. Each public institution of higher education shall comply with such policies and
357 regulations.

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

361 17. Require each institution of higher education formed, chartered, or established in the
362 Commonwealth after July 1, 1980, to ensure the preservation of student transcripts in the event of
363 institutional closure or revocation of approval to operate in the Commonwealth. An institution may
364 ensure the preservation of student transcripts by binding agreement with another institution of higher
365 education with which it is not corporately connected or in such other way as the Council may authorize
366 by regulation. In the event that an institution closes or has its approval to operate in the Commonwealth

367 revoked, the Council, through its director, may take such action as is necessary to secure and preserve
 368 the student transcripts until such time as an appropriate institution accepts all or some of the transcripts.
 369 Nothing in this subdivision shall be deemed to interfere with the right of a student to his own transcripts
 370 or authorize disclosure of student records except as may otherwise be authorized by law.

371 18. Require the development and submission of articulation, dual admissions, and guaranteed
 372 admissions agreements between associate-degree-granting and baccalaureate public institutions of higher
 373 education.

374 19. Provide periodic updates of base adequacy funding guidelines adopted by the Joint Subcommittee
 375 Studying Higher Education Funding Policies for each public institution of higher education.

376 20. In consultation with each public institution of higher education, develop a one-year uniform
 377 certificate of general studies program to be offered at each comprehensive community college. Such
 378 program shall ensure that a comprehensive community college student who completes the one-year
 379 certificate program is eligible to transfer all credits earned in academic subject coursework to a
 380 baccalaureate public institution of higher education upon acceptance to such baccalaureate institution.

381 21. Cooperate with the Board of Education in matters of interest to both public elementary and
 382 secondary schools and public institutions of higher education, particularly in connection with
 383 coordination of the college admission requirements, coordination of teacher training programs with the
 384 public school programs, and the ~~Board's~~ *Board of Education's* Six-Year Educational Technology Plan for
 385 Virginia. The Council shall encourage public institutions of higher education to design programs that
 386 include the skills necessary for the successful implementation of such Plan.

387 22. Advise and provide technical assistance to the Brown v. Board of Education Scholarship
 388 Committee in the implementation and administration of the Brown v. Board of Education Scholarship
 389 Program pursuant to Chapter 34.1 (§ 30-231.01 et seq.) of Title 30.

390 23. Insofar as possible, seek the cooperation and utilize the facilities of existing state departments,
 391 institutions, and agencies in carrying out its duties.

392 24. Serve as the coordinating council for public institutions of higher education.

393 25. Serve as the planning and coordinating agency for all postsecondary educational programs for all
 394 health professions and occupations and make recommendations, including those relating to financing, for
 395 providing adequate and coordinated educational programs to produce an appropriate supply of properly
 396 trained personnel. The Council may conduct such studies as it deems appropriate in furtherance of the
 397 requirements of this subdivision. All state departments and agencies shall cooperate with the Council in
 398 the execution of its responsibilities under this subdivision.

399 26. Carry out such duties as the Governor may assign to it in response to agency designations
 400 requested by the federal government.

401 27. Insofar as practicable, preserve the individuality, traditions, and sense of responsibility of each
 402 public institution of higher education in carrying out its duties.

403 28. Insofar as practicable, seek the assistance and advice of each public institution of higher
 404 education in fulfilling its duties and responsibilities.

405 29. Assist the Virginia Research Investment Committee with the administration of the Virginia
 406 Research Investment Fund consistent with the provisions of Article 8 (§ 23.1-3130 et seq.) of Chapter
 407 31.

408 **§ 23.1-210. Advisory services to accredited nonprofit private institutions of higher education;**
 409 **Private College Advisory Board.**

410 A. The Council shall provide advisory services to accredited nonprofit private institutions of higher
 411 education on academic and administrative matters. The Council may review and advise on joint
 412 activities, including contracts for services, between nonprofit private *institutions of higher education* and
 413 public institutions of higher education and between nonprofit private institutions of higher education and
 414 any agency or political subdivision of the Commonwealth. The Council may collect and analyze such
 415 data as may be pertinent to such activities.

416 B. The Council shall seek the advice of the Private College Advisory Board, and the Advisory Board
 417 shall assist the Council in the performance of its duties as required by subsection A. The Private College
 418 Advisory Board shall be composed of representatives of nonprofit private institutions of higher education
 419 and such other members as the Council may select and shall be broadly representative of nonprofit
 420 private institutions of higher education.

421 C. The Private College Advisory Board shall meet at least once each year.

422 **§ 23.1-227. Laws of the Commonwealth to apply to contracts.**

423 The laws of the Commonwealth shall govern any agreement, contract, or instrument of indebtedness
 424 executed between a postsecondary school and any person ~~enrolling~~ *who enrolls* in any course or
 425 program offered or to be offered by such school in the Commonwealth or any person *who is* employed
 426 or offered employment by such school in the Commonwealth.

427 **§ 23.1-301. Short title; objective; purposes.**

428 A. This chapter may be cited as the "Preparing for the Top Jobs of the 21st Century: The Virginia
429 Higher Education Opportunity Act of 2011," the "Top Jobs Act," or "TJ21."

430 B. The objective of this chapter is to fuel strong economic growth in the Commonwealth and prepare
431 Virginians for the top job opportunities in the knowledge-driven economy of the 21st century by
432 establishing a long-term commitment, policy, and framework for sustained investment and innovation
433 that will (i) enable the Commonwealth to build upon the strengths of its excellent higher education
434 system and achieve national and international leadership in college degree attainment and personal
435 income and (ii) ensure that these educational and economic opportunities are accessible and affordable
436 for all capable and committed Virginia students.

437 C. In furtherance of the objective set forth in subsection B, the following purposes shall inform the
438 development and implementation of funding policies, performance criteria, economic opportunity
439 metrics, and recommendations required by this chapter:

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

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

447 3. To (i) place the Commonwealth among the most highly educated states and countries by
448 conferring approximately 100,000 cumulative additional undergraduate degrees on Virginians between
449 2011 and 2025, accompanied by a comparable percentage increase in privately conferred undergraduate
450 degrees in the Commonwealth over the same period and (ii) achieve this purpose by expanding
451 enrollment of Virginians at public institutions of higher education and private institutions of higher
452 education, improving undergraduate graduation and retention rates in the higher education system in the
453 Commonwealth, and increasing degree completion by Virginians with partial credit toward a college
454 degree, including students with ongoing job and family commitments who require access to
455 nontraditional college-level educational opportunities;

456 4. To enhance personal opportunity and earning power for individual Virginians by (i) increasing
457 college degree attainment in the Commonwealth, especially in high-demand, high-income fields such as
458 STEM and health care fields and (ii) providing information about the economic value and impact of
459 individual degree programs by institution;

460 5. To promote university-based research that produces outside investment in the Commonwealth,
461 fuels economic advances, triggers commercialization of new products and processes, fosters the
462 formation of new businesses, leads businesses to bring their facilities and jobs to the Commonwealth,
463 and in other ways helps place the Commonwealth on the cutting edge of the knowledge-driven
464 economy;

465 6. To support the national effort to enhance the security and economic competitiveness of the United
466 States and secure a leading economic position for the Commonwealth through increased research and
467 instruction in STEM and related fields that require qualified faculty, appropriate research facilities and
468 equipment, public-private and intergovernmental collaboration, and sustained state support;

469 7. To preserve and enhance the excellence and cost-efficiency of the Commonwealth's higher
470 education system through reform-based investment that promotes innovative instructional models and
471 pathways to degree attainment, including optimal use of physical facilities and instructional resources
472 throughout the year, technology-enhanced instruction, sharing of instructional resources between
473 colleges, universities, and other degree-granting entities in the Commonwealth, increased online learning
474 opportunities for nontraditional students, improved rate and pace of degree completion, expanded
475 availability of dual enrollment and advanced placement options and early college commitment programs,
476 expanded comprehensive community college transfer options leading to bachelor's degree completion,
477 and enhanced college readiness before matriculation;

478 8. To realize the potential for enhanced benefits from the Restructured Higher Education Financial
479 and Administrative Operations Act (§ 23.1-1000 et seq.) through a sustained commitment to the
480 principles of autonomy, accountability, affordable access, and mutual trust and obligation underlying the
481 restructuring initiative;

482 9. To establish a higher education funding framework and policy that promotes stable, predictable,
483 equitable, and adequate funding, facilitates effective planning at the institutional and state levels,
484 provides incentives for increased enrollment of Virginia students at public ~~or~~ *institutions of higher*
485 *education and* nonprofit private institutions of higher education, provides need-based financial aid for
486 low-income and middle-income students and families, relieves the upward pressure on tuition associated
487 with loss of state support due to economic downturns or other causes, and provides financial incentives
488 to promote innovation and enhanced economic opportunity in furtherance of the objective of this chapter
489 set forth in subsection A; and

490 10. To recognize that the unique mission and contributions of each public institution of higher
 491 education and private institution of higher education is consistent with the desire to build upon the
 492 strengths of the Commonwealth's excellent system of higher education, afford these unique missions and
 493 contributions appropriate safeguards, and allow these attributes to inform the development and
 494 implementation of funding policies, performance criteria, economic opportunity metrics, and
 495 recommendations in the furtherance of the objective of this chapter set forth in subsection B.

496 **§ 23.1-308. STEM public-private partnership established; duties.**

497 A. To (i) increase the number of students completing degrees in the high-demand, high-impact
 498 STEM fields and other high-demand, anticipated-shortage fields such as the health care-related
 499 professions and (ii) help develop and guide the implementation of a comprehensive plan for higher
 500 degree attainment in these fields, the Secretaries of Education and Finance, in cooperation with the
 501 House Committees on Appropriations and Education and the Senate Committees on Finance and on
 502 Education and Health, shall form a public-private partnership comprised of private-sector leaders,
 503 distinguished representatives from the scientific community, including retired military personnel,
 504 government scientists, and researchers, educational experts, relevant state and local government officials,
 505 and such other individuals as they deem appropriate.

506 B. The partnership shall advise on, and may collaborate with public and private entities to develop
 507 and implement strategies to address, such priority issues as (i) determining the need for additional
 508 high-demand degree enrollment, capacity, and resources at public institutions of higher education and
 509 private institutions of higher education; (ii) incentivizing greater coordination, innovation, and private
 510 collaboration in kindergarten through secondary school STEM and other high-demand degree initiatives;
 511 (iii) determining and refining best practices in STEM instruction and leveraging those best practices to
 512 promote STEM education in both the Commonwealth's institutions of higher education and its
 513 elementary and secondary schools; (iv) enhancing teacher education and professional development in
 514 STEM disciplines; (v) strengthening mathematics readiness in secondary schools through earlier
 515 diagnosis and remediation of deficiencies; (vi) providing financial incentives to increase STEM
 516 enrollment and degree production at the Commonwealth's institutions of higher education; (vii) providing
 517 assistance to public institutions of higher education and private institutions of higher education in the
 518 acquisition and improvement of STEM-related facilities and equipment; (viii) providing STEM
 519 incentives in early pathway programs at institutions of higher education and in the ~~comprehensive~~
 520 ~~community college transfer grant program~~ *Two-Year College Transfer Grant Program*; (ix) assessing
 521 degree programs using such economic opportunity metrics as marketplace demand, earning potential, and
 522 employer satisfaction and other indicators of the historical and projected economic value and impact of
 523 degrees to provide useful information on degrees to students as they make career choices and to state
 524 policy makers and university decision makers as they decide how to allocate scarce resources; (x)
 525 aligning state higher education efforts with marketplace demands; and (xi) determining such other issues
 526 as the partnership deems relevant to increasing the number of students completing degrees in STEM and
 527 other high-demand fields at institutions of higher education.

528 **§ 23.1-634. Prompt crediting and expeditious refunding of funds.**

529 Each eligible institution acting as an agent for students receiving *awards grants* under the Program
 530 shall promptly credit disbursed funds to student accounts following the institution's verification of
 531 student eligibility and expeditiously distribute any refunds due recipients.

532 **§ 23.1-712. Payroll deductions.**

533 The Commonwealth, the agencies and localities of the Commonwealth and their subdivisions, and
 534 any employer in the Commonwealth ~~are authorized to~~ *may* agree, by contract or otherwise, to remit
 535 payments or contributions on behalf of an employee toward prepaid tuition contracts or savings trust
 536 accounts through payroll deductions.

537 **§ 23.1-1004. Management agreement; eligibility and application.**

538 A. The governing *board* and administration of each public ~~institutions~~ *institution* of higher education
 539 that meets the state goals set forth in subsection A of § 23.1-1002 and meets the requirements of this
 540 article to demonstrate the ability to manage successfully the administrative and financial operations of
 541 the institution without jeopardizing the financial integrity and stability of the institution may negotiate
 542 with the Governor to develop a management agreement with the Commonwealth to exercise restructured
 543 financial and administrative authority.

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

545 1. a. Its most current and unenhanced bond rating received from Moody's Investors Service, Inc.,
 546 Standard & Poor's, Inc., or Fitch Investor's Services, Inc., is at least AA- (i.e., AA minus) or its
 547 equivalent, provided that such bond rating has been received within the last three years of the date that
 548 the initial management agreement is entered into; or

549 b. The institution has participated in decentralization pilot programs in the areas of finance and
 550 capital outlay, demonstrated management competency in those two areas as evidenced by a written

551 certification from the Cabinet Secretary designated by the Governor, received restructured operational
 552 authority under a memorandum of understanding pursuant to Article 3 (§ 23.1-1003 et seq.) in at least
 553 one functional area, and demonstrated management competency in that area for a period of at least two
 554 years;

555 2. At least an absolute two-thirds of the institution's governing board has voted in the affirmative for
 556 a resolution in support of a request for restructured operational authority under a management
 557 agreement;

558 3. The institution submits to the Governor a written request for his approval of the management
 559 agreement that contains evidence that (i) the institution possesses the necessary administrative
 560 infrastructure, experience, and expertise to perform successfully its public educational mission as a
 561 covered institution; (ii) the institution is financially able to operate as a covered institution without
 562 jeopardizing the financial integrity and stability of the institution; (iii) the institution consistently meets
 563 the financial and administrative management standards pursuant to § 23.1-1001; and (iv) the institution's
 564 governing board has adopted performance and accountability standards, in addition to any institutional
 565 performance benchmarks included in the general appropriation act and developed pursuant to § 23.1-206,
 566 against which its implementation of the restructured operational authority under the management
 567 agreement can be measured;

568 4. The institution provides a copy of the written request to the Chairmen of the House Committee on
 569 Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate
 570 Committee on Education and Health;

571 5. The institution agrees to reimburse the Commonwealth for any additional costs that the
 572 Commonwealth incurs to provide health or other group insurance benefits to employees and undertake
 573 any risk management program that are attributable to the institution's exercise of restructured operational
 574 authority. The Secretary of Finance and the Secretary of Administration, in consultation with the
 575 Virginia Retirement System and the affected institutions, shall establish procedures for determining any
 576 amounts to be paid by each institution and a mechanism for transferring the appropriate amounts directly
 577 and solely to the affected programs;

578 6. The institution considers potential future impacts of tuition increases on the Virginia College
 579 Savings Plan and discusses such potential impacts with parties participating in the development of the
 580 management agreement. The chief executive officer of the Virginia College Savings Plan shall provide
 581 to the institution and such parties the Plan's assumptions underlying the contract pricing of the program;
 582 and

583 7. The Governor transmits a draft of any management agreement that affects insurance or benefit
 584 programs administered by the Virginia Retirement System to the Board of Trustees of the Virginia
 585 Retirement System, which shall review the relevant provisions of the management agreement to ensure
 586 compliance with the applicable provisions of Title 51.1, administrative policies and procedures, and
 587 federal regulations governing retirement plans and advise the Governor and appropriate Cabinet
 588 Secretaries of any conflicts.

589 **§ 23.1-1014. Covered institutions; operational authority; financial operations; financing and**
 590 **indebtedness.**

591 A. Each covered institution may:

592 1. Borrow money and issue bonds, notes, or other obligations as provided in this article and purchase
 593 such bonds, notes, or other obligations;

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

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

601 B. Notwithstanding the provisions of this chapter, no covered institution is exempt from any
 602 requirement or covenant contained in any outstanding bonds, notes, or other obligations.

603 **§ 23.1-1026. Covered institutions; operational authority; human resources; severance policies.**

604 A. Each covered institution shall adopt a severance policy for its eligible participating covered
 605 employees that is applicable to voluntary and involuntary separations, including reductions in workforce.
 606 The provisions of the Workforce Transition Act (§ 2.2-3200 et seq.) shall not apply to participating
 607 covered employees.

608 B. The terms and conditions of a covered institution's severance policy for eligible participating
 609 covered employees shall be determined by the institution's governing board. The covered institution and
 610 the Board of the Virginia Retirement System shall negotiate a formula according to which cash
 611 severance benefits may be converted to years of age or creditable service for participating covered
 612 employees who participate in the Virginia Retirement System.

613 C. Covered employees who (i) were employees of a covered institution and were covered by the
 614 provisions of Chapter 29 (§ 2.2-2900 et seq.) of Title 2.2 prior to the effective date of the initial
 615 management agreement, (ii) would otherwise be eligible for severance benefits under the Workforce
 616 Transition Act (§ 2.2-3200 et seq.), and (iii) are separated by a covered institution because of a
 617 reduction in workforce have the same preferential hiring rights with state agencies and other executive
 618 branch institutions as other state employees have under § 2.2-3201. A covered institution shall recognize
 619 the hiring preference conferred by § 2.2-3201 on state employees who were (a) hired by a state agency
 620 or executive branch institution before the covered institution's effective date of the initial management
 621 agreement and (b) separated after that date by that state agency or executive branch institution because
 622 of a reduction in workforce. If a covered institution has adopted a classification system pursuant to
 623 § 23.1-1021 that differs from the classification system administered by the Department of Human
 624 Resource Management, the covered institution shall classify the separated employee according to its
 625 classification system and shall place the separated employee appropriately. Any such separated employee
 626 who is hired by a covered institution is a participating covered employee for purposes of this article.
 627 Classification decisions that are made pursuant to this subsection and apply to employees transferring
 628 between state agencies, between other executive branch institutions and covered institutions, and between
 629 covered institutions as a result of a reduction in ~~force~~ *workforce* and with the preferential hiring rights
 630 provided in this subsection and in § 2.2-3201 are presumed appropriate, and a separated employee who
 631 grieves the classification decision bears the burden of demonstrating that the classification violates the
 632 separated employee's preferential hiring rights.

633 D. An employee's transition from being an employee of a public institution of higher education to
 634 being a covered employee of a covered institution on the effective date of a covered institution's initial
 635 management agreement shall not, in and of itself, constitute a severance of that employee or a reduction
 636 in ~~force~~ *workforce* that would make either the covered institution's severance policy adopted pursuant to
 637 subsection A or the Workforce Transition Act (§ 2.2-3200 et seq.) applicable to that employee.

638 **§ 23.1-1211. Default on payments.**

639 A. Whenever it appears to the Governor from an affidavit filed with him by the paying agent for the
 640 bonds issued by the Authority that an eligible institution has defaulted on the payment of the principal
 641 of or premium, if any, or interest on its bonds pursuant to this article, the Governor shall immediately
 642 make a summary investigation into the facts set forth in the affidavit. If it is established to the
 643 satisfaction of the Governor that the eligible institution is in default in the payment of the principal of or
 644 premium, if any, or interest on its bonds, the Governor immediately shall make an order directing the
 645 State Comptroller to make payment immediately to the owners or paying agent of the bonds in default
 646 on behalf of the eligible institution from any appropriation available to the eligible institution in the
 647 amount due and remaining unpaid by the eligible institution on its bonds.

648 B. Any payment so made by the State Comptroller to the owners or paying agent of the bonds in
 649 default shall be credited as if made directly by the eligible institution and charged by the State
 650 Comptroller against the appropriations of the eligible institution. The owners or paying agent of the
 651 bonds in default at the time of payment shall deliver to the State Comptroller, in a form satisfactory to
 652 the State Comptroller, a receipt for payment of the principal, premium, or interest satisfied by the
 653 payment. The State Comptroller shall report each payment made to the governing ~~body~~ *board* of the
 654 defaulting eligible institution under the provisions of this section.

655 C. The Governor shall direct the State Comptroller to (i) charge against the appropriations available
 656 to any eligible institution that has defaulted on its bonds pursuant to this section all future payments of
 657 principal of and interest on the eligible institution's bonds when due and payable and (ii) make such
 658 payments to the owners or paying agent of the bonds on behalf of the eligible institution to ensure that
 659 no future default will occur on such bonds. The charge and payment shall be made upon receipt of
 660 documentation that the State Comptroller deems to be satisfactory evidence of the claim. The owners or
 661 paying agent of the bonds at the time of each payment shall deliver to the State Comptroller, in a form
 662 satisfactory to the State Comptroller, a receipt for payment of the principal or interest satisfied by the
 663 payment.

664 D. Nothing in this section shall be construed to create any obligation on the part of the State
 665 Comptroller or the Commonwealth to make any payment on behalf of the defaulting eligible institution
 666 other than from funds appropriated to the defaulting eligible institution.

667 **§ 23.1-1225. Powers; acquisition of property.**

668 The Authority may, directly or through a participating institution as its agent, acquire by (i) purchase
 669 solely from funds provided under the ~~authority~~ *provisions* of this article, (ii) gift, or (iii) devise, such
 670 lands, structures, property, real or personal, rights, rights-of-way, air rights, franchises, easements, and
 671 other interests in lands, including lands lying under water and riparian rights, that are located within the
 672 Commonwealth as it may deem necessary or convenient for the acquisition, construction, or operation of
 673 a project, upon such terms and at such prices as it deems reasonable and can be agreed upon between it

674 and the owner of the property and take title to the property in the name of the Authority or any
675 participating institution as its agent.

676 **§ 23.1-1300. Members of governing boards; removal; terms; nonvoting, advisory**
677 **representatives.**

678 A. Members appointed by the Governor to the governing boards of public institutions of higher
679 education shall serve for terms of four years. Vacancies occurring other than by expiration of a term
680 shall be filled for the unexpired term. No member appointed by the Governor to such a governing board
681 shall serve for more than two consecutive four-year terms; however, a member appointed by the
682 Governor to serve an unexpired term is eligible to serve two consecutive four-year terms immediately
683 succeeding such unexpired term. Except as otherwise provided in § 23.1-2601, all appointments are
684 subject to confirmation by the General Assembly. Members appointed by the Governor to the governing
685 board of a public institution of higher education shall continue to hold office until their successors have
686 been appointed and ~~confirmed~~ *qualified*. Ex officio members shall serve a term coincident with their
687 term of office.

688 B. No member appointed by the Governor to the governing board of a public institution of higher
689 education who has served two consecutive four-year terms on such board is eligible to serve on the
690 same board until at least four years have passed since the end of his second consecutive four-year term.

691 C. Notwithstanding the provisions of subsection E or any other provision of law, the Governor may
692 remove from office for malfeasance, misfeasance, incompetence, or gross neglect of duty any member of
693 the board of any public institution of higher education and fill the vacancy resulting from the removal.

694 D. The Governor shall set forth in a written public statement his reasons for removing any member
695 pursuant to subsection C at the time the removal occurs. The Governor is the sole judge of the
696 sufficiency of the cause for removal as set forth in subsection C.

697 E. If any member of the governing board of a public institution of higher education fails to attend (i)
698 the meetings of the board for one year without sufficient cause, as determined by a majority vote of the
699 board, or (ii) the educational programs required by § 23.1-1304 in his first two years of membership
700 without sufficient cause, as determined by a majority vote of the board, the remaining members of the
701 board shall record such failure in the minutes at its next meeting and notify the Governor, and the office
702 of such member shall be vacated. No member of the board of visitors of a ~~four-year~~ *baccalaureate*
703 public institution of higher education or the State Board for Community Colleges who fails to attend the
704 educational programs required by § 23.1-1304 during his first four-year term is eligible for
705 reappointment to such board.

706 F. The governing board of each public institution of higher education shall adopt in its bylaws
707 policies (i) for removing members pursuant to subsection E and (ii) referencing the Governor's power to
708 remove members described in subsection C.

709 G. The governing board of each public institution of higher education and each local community
710 college board may appoint one or more nonvoting, advisory faculty representatives to its respective
711 board. In the case of local community college boards and boards of visitors, such representatives shall
712 be chosen from individuals elected by the faculty or the institution's faculty senate or its equivalent. In
713 the case of the State Board, such representatives shall be chosen from individuals elected by the
714 Chancellor's Faculty Advisory Committee. Such representatives shall be appointed to serve (i) at least
715 one term of at least 12 months, which shall be coterminous with the institution's fiscal year or (ii) for
716 such terms as may be mutually agreed to by the State Board and the Chancellor's Faculty Advisory
717 Committee, or by the local community college board or the board of visitors, and the institution's faculty
718 senate or its equivalent.

719 H. The board of visitors of any baccalaureate public institution of higher education shall appoint one
720 or more students as nonvoting, advisory representatives. Such representatives shall be appointed under
721 such circumstances and serve for such terms as the board of visitors of the institution shall prescribe.

722 I. Nothing in subsections G and H shall prohibit the governing board of any public institution of
723 higher education or any local community college board from excluding such nonvoting, advisory faculty
724 or student representatives from discussions of faculty grievances, faculty or staff disciplinary matters or
725 salaries, or any other matter.

726 **§ 23.1-1303. Governing boards; duties.**

727 A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine,
728 article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued
729 patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

730 B. The governing board of each public institution of higher education shall:

731 1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions
732 that (i) establish the requirement of transparency, to the extent required by law, in all board actions; (ii)
733 describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as
734 set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record
735 minutes of each open meeting and post the minutes on the board's website, in accordance with

736 subsection I of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically
 737 exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in
 738 accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved
 739 in an open meeting before it can have any force or effect, in accordance with subsection B of
 740 § 2.2-3711; and (iii) require that the board invite the Attorney General's appointee or representative to
 741 all meetings of the board, executive committee, and board committees;

742 2. Establish regulations or institution policies for the acceptance and assistance of students that
 743 include provisions (i) that specify that individuals who have knowingly and willfully failed to meet the
 744 federal requirement to register for the selective service are not eligible to receive any state direct student
 745 assistance, (ii) that specify that the accreditation status of a public high school in the Commonwealth
 746 shall not be considered in making admissions determinations for students who have earned a diploma
 747 pursuant to the requirements established by the Board of Education, and (iii) relating to the admission of
 748 certain graduates of comprehensive community colleges as set forth in § 23.1-907;

749 3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

750 4. Notwithstanding any other provision of state law, establish policies and procedures requiring the
 751 notification of the parent of a dependent student when such student receives mental health treatment at
 752 the institution's student health or counseling center and such treatment becomes part of the student's
 753 educational record in accordance with the federal Health Insurance Portability and Accountability Act
 754 (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal
 755 Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part
 756 99). Such notification shall only be required if it is determined that there exists a substantial likelihood
 757 that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to
 758 himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious
 759 harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.
 760 However, notification may be withheld if any person licensed to diagnose and treat mental, emotional,
 761 or behavioral disorders by a health regulatory board within the Department of Health Professions who is
 762 treating the student has made a part of the student's record a written statement that, in the exercise of
 763 his professional judgment, the notification would be reasonably likely to cause substantial harm to the
 764 student or another person. No public institution of higher education or employee of a public institution
 765 of higher education making a disclosure pursuant to this subsection is civilly liable for any harm
 766 resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct
 767 by the institution or its employees;

768 5. Establish policies and procedures requiring the release of the educational record of a dependent
 769 student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a
 770 parent at his request;

771 6. Establish programs to seek to ensure that all graduates have the technology skills necessary to
 772 compete in the twenty-first century and that all students matriculating in teacher-training programs
 773 receive instruction in the effective use of educational technology;

774 7. Establish policies for the discipline of students who participate in varsity intercollegiate athletics,
 775 including a provision requiring an annual report by the administration of the institution to the governing
 776 board regarding enforcement actions taken pursuant to such policies;

777 8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-2900
 778 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed
 779 meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive
 780 officer's performance. Any change to the chief executive officer's employment contract during any such
 781 meeting or any other meeting of the board shall be made only by a vote of the majority of the board's
 782 members;

783 9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations
 784 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter
 785 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human
 786 research committee to submit to the Governor, the General Assembly, and the chief executive officer of
 787 the institution or his designee at least annually a report on the human research projects reviewed and
 788 approved by the committee and require the committee to report any significant deviations from approved
 789 proposals;

790 10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and the
 791 accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of
 792 such statements pursuant to § 30-133;

793 11. Submit to the General Assembly and the Governor an annual executive summary of its interim
 794 activity and work no later than the first day of each regular session of the General Assembly. The
 795 executive summary shall be submitted as provided in the procedures of the Division of Legislative
 796 Automated Systems for the processing of legislative documents and reports and shall be posted on the

797 General Assembly's website;

798 12. Make available to any interested party upon request a copy of the portion of the most recent
799 report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in
800 Virginia" pertaining to institutions of higher education;

801 13. Adopt policies or institution regulations regarding the ownership, protection, assignment, and use
802 of intellectual property and provide a copy of such policies *or institution regulations* to the Governor
803 and the Joint Commission on Technology and Science. All employees, including student employees, of
804 public institutions of higher education are bound by the intellectual property policies *or institution*
805 *regulations* of the institution employing them; and

806 14. Adopt policies that are supportive of the intellectual property rights of matriculated students who
807 are not employed by such institution.

808 **§ 23.1-1305. Governing boards; student accounts; collections.**

809 No governing board shall refer a student account to collections for nonpayment before *such referral*
810 *is* required by the provisions of § 2.2-4806. This section shall not apply to public institutions of higher
811 education that have entered into management agreements with the Commonwealth pursuant to the
812 Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.).

813 **§ 23.1-2308. The Medical College of Virginia, Health Sciences Schools of the University.**

814 The colleges, schools, and divisions previously existing as The Medical College of Virginia are
815 designated the *Medical College of Virginia*, Health Sciences Schools of the University.

816 **§ 23.1-2404. Powers of the Authority.**

817 A. The Authority has all the powers necessary or convenient to carry out the purposes and provisions
818 of this chapter, including the power to:

819 1. Sue and be sued in its own name;

820 2. Have and alter an official seal;

821 3. Have perpetual duration and succession in its name;

822 4. Locate and maintain offices at such places as it may designate;

823 5. Make and execute contracts, guarantees, or any other instruments and agreements necessary or
824 convenient for the exercise of its powers and functions, including contracts with hospitals or health care
825 businesses to operate and manage any or all of the hospital facilities or operations, and incur liabilities
826 and secure the obligations of any entity or individual;

827 6. Conduct or engage in any lawful business, activity, effort, or project consistent with the
828 Authority's purposes or necessary or convenient to exercise its powers;

829 7. Exercise, in addition to its other powers, all powers that are (i) granted to corporations by the
830 provisions of Title 13.1 or similar provisions of any successor law, except in those cases in which the
831 power is confined to corporations created under such title, and (ii) not inconsistent with the purposes
832 and intent of this chapter or the limitations included in this chapter;

833 8. Accept, hold, and enjoy any gift, devise, or bequest to the Authority or its predecessors to be held
834 for the uses and purposes designated by the donor, if any, or if not so designated, for the general
835 purposes of the Authority, whether given directly or indirectly, and accept, execute, and administer any
836 trust or endowment fund in which it has or may have an interest under the terms of the instrument
837 creating the trust or endowment fund;

838 9. Borrow money and issue bonds as provided in this chapter and purchase such bonds;

839 10. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments
840 with the Virginia Public Building Authority and the Virginia College Building Authority, which
841 authorities ~~are authorized to~~ *may* borrow money and make and issue negotiable notes, bonds, and other
842 evidences of indebtedness to provide such financing relating to the hospital facilities or any project;

843 11. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments
844 with the Commonwealth as otherwise provided by law relating to the hospital facilities or any project;

845 12. Procure such insurance, participate in such insurance plans, or provide such self-insurance as it
846 deems necessary or convenient to carry out the purposes and provisions of this chapter. The purchase of
847 insurance, participation in an insurance plan, or creation of a self-insurance plan by the Authority is not
848 a waiver or relinquishment of any sovereign immunity to which the Authority or its officers, directors,
849 employees, or agents are otherwise entitled;

850 13. Develop policies and procedures generally applicable to the procurement of goods, services, and
851 construction based upon competitive principles;

852 14. Except as to those hospital facilities or any part of such facilities that are leased to the Authority
853 by the University, the control and disposition of which shall be determined by such lease instruments:

854 a. Own, hold, improve, use, and otherwise deal with real or personal property, tangible or intangible,
855 or any right, easement, estate, or interest in such property, acquired by purchase, exchange, gift,
856 assignment, transfer, foreclosure, lease, bequest, devise, operation of law, or other means on such terms
857 and conditions and in such manner as it may deem proper;

858 b. Sell, assign, lease, encumber, mortgage, or otherwise dispose of any project, any other real or

859 personal property, tangible or intangible, any right, easement, estate, or interest in such property, or any
860 deed of trust or mortgage lien interest that it owns, that is under its control or custody or in its
861 possession;

862 c. Release or relinquish any right, title, claim, lien, interest, easement, or demand however acquired,
863 including any equity or right of redemption in property foreclosed by it; and

864 d. Take any action pursuant to subdivision 14 by public or private sale or with or without public
865 bidding, notwithstanding the provisions of any other law;

866 15. Accept loans, grants, contributions, or other assistance from the federal government, the
867 Commonwealth, any political subdivision of the Commonwealth, or any other public or private source to
868 carry out any of the purposes of this chapter and enter into any agreement or contract regarding the
869 acceptance, use, or repayment of any such loan, grant, contribution, or assistance in furtherance of the
870 purposes of this chapter;

871 16. Exercise the power of eminent domain pursuant to the provisions of Chapter 2 (§ 25.1-200 et
872 seq.) of Title 25.1 to acquire by condemnation any real property, including fixtures and improvements,
873 that it may deem necessary to carry out the purposes of this chapter, upon (i) its adoption of a
874 resolution declaring that the acquisition of such property is in the public interest and necessary for a
875 public use and (ii) the approval of the Governor. The Authority may acquire property already devoted to
876 a public use, provided that no property belonging to any locality, religious corporation, unincorporated
877 church, or charitable corporation may be acquired without its consent;

878 17. Fix, revise, charge, and collect rates, rentals, fees, and other charges for the services or facilities
879 furnished by or on behalf of the Authority and establish policies, procedures, and regulations regarding
880 any such service rendered or the use, occupancy or operation of any such facility. Such charges and
881 policies, procedures, and regulations are not subject to supervision or regulation by any commission,
882 board, bureau, or agency of the Commonwealth except as otherwise provided by law for the providers
883 of health care;

884 18. Consistent with § 23.1-2407, create, assist in the creation of, own in whole or in part, control,
885 participate in or with any public or private entity, purchase, receive, subscribe for, own, hold, vote, use,
886 employ, sell, mortgage, lend, pledge, or otherwise acquire or dispose of any (i) shares or obligations of,
887 or other interests in, any entities organized for any purpose within or outside the Commonwealth and (ii)
888 obligations of any person or corporation;

889 19. Participate in joint ventures with individuals, corporations, governmental bodies or agencies,
890 partnerships, associations, insurers, or other entities to facilitate any activities or programs consistent
891 with the public purposes and intent of this chapter;

892 20. Create a nonprofit entity for the purpose of soliciting, accepting, and administering grants,
893 outright gifts and bequests, endowment gifts and bequests, and gifts and bequests in trust. Such entity
894 shall not engage in trust business or duplicate such activities by the University or its related foundations;

895 21. Provide appropriate assistance, including making loans and providing time of employees, to
896 corporations, partnerships, associations, joint ventures, or other entities whether such entities are owned
897 or controlled in whole or in part or directly or indirectly by the Authority;

898 22. Provide, promote, support, and sponsor education and scientific research in medicine, public
899 health, and related fields and promote public knowledge in medicine, public health, and related fields;

900 23. Administer programs to assist in the delivery of medical and related services to the citizens of
901 the Commonwealth and others;

902 24. Participate in and administer federal, state, and local programs affecting, supporting, or carrying
903 out any of its purposes; and

904 25. Exercise independently the powers conferred by this chapter in furtherance of its corporate and
905 public purposes.

906 B. The exercise of the powers permitted by this chapter shall be deemed the performance of essential
907 governmental functions and matters of public necessity for the entire Commonwealth in the provision of
908 health care, medical and health sciences education, and research for which public moneys may be
909 borrowed, loaned, spent, or otherwise utilized and private property may be utilized or acquired.

910 **§ 23.1-2408. Moneys of the Authority.**

911 A. All moneys of the Authority derived from any source shall be paid to the treasurer of the
912 Authority. Such moneys shall be deposited in the first instance by the treasurer in one or more banks or
913 trust companies, in one or more special accounts. All banks and trust companies ~~are authorized to~~ may
914 give security for such deposits, if required by the Authority. The moneys in such accounts shall be paid
915 out on the warrant or other orders of the treasurer of the Authority or such other person as the Authority
916 may authorize to execute such warrants or orders.

917 B. Notwithstanding any provision of law to the contrary, the Authority may invest its operating funds
918 in any obligations or securities that are considered legal investments for public funds in accordance with
919 the Investment of Public Funds Act (§ 2.2-4500 et seq.). The board shall adopt written investment

920 guidelines and retain an independent investment advisory firm or consultant to review at least every five
921 years the suitability of the Authority's investments and the consistency of such investments with the
922 investment guidelines.

923 **§ 23.1-2409. Grants and loans from localities.**

924 Localities are authorized to ~~may~~ lend or donate money or other property to the Authority for any of
925 the Authority's purposes. The local governing body making the grant or loan may restrict the use of
926 such grants or loans to a specific project within or outside that locality.

927 **§ 23.1-2413. Capital projects.**

928 A. All capital projects of the Authority shall be approved by the board. Within 30 days after
929 approval of any capital project in excess of \$5 million, the board shall notify the House Appropriations
930 and Senate Finance Committees of the scope, cost, and construction schedule of the proposed capital
931 project. The board may undertake the project unless either Committee raises objections within 30 days
932 of the notification, in which case the Authority shall not undertake the project until such objections are
933 resolved.

934 B. Before the Authority materially increases the size or materially changes the scope of any capital
935 project for which construction has commenced, such project shall be approved again by the board in
936 accordance with subsection A and, in the case of any capital project in excess of \$5 million, presented
937 again to the House Appropriations and Senate Finance Committees in accordance with subsection A.

938 C. Notwithstanding any provision of law to the contrary, the Authority is not subject to any further
939 process or procedure that requires the submission, review, or approval of any capital project; however,
940 the Authority shall ensure that ~~BOCA~~ *Building Officials and Code Administrators (BOCA) Code* [*or*
941 *any successor code*] and fire safety inspections are conducted for any capital project and that such
942 projects are inspected by the State Fire Marshal or his designee prior to certification for building
943 occupancy.

944 **§ 23.1-2415. Employees of the Authority.**

945 A. Employees of the Authority shall be employed on such terms and conditions as established by the
946 Authority. The board shall develop and adopt policies and procedures that afford its employees
947 grievance rights, ensure that employment decisions are based upon the merit and fitness of applicants,
948 and prohibit discrimination on the basis of race, religion, color, sex, or national origin.

949 B. The Authority shall issue a written notice to all individuals whose employment is transferred to
950 the Authority. The date upon which such written notice is issued is referred to in this section as the
951 "Option Date." Each individual whose employment is transferred to the Authority may, by written
952 request made within 180 days of the Option Date, elect not to become employed by the Authority. Any
953 employee of MCV Hospitals who (i) elects not to become employed by the Authority; (ii) is not
954 reemployed by any department, institution, board, commission, or agency of the Commonwealth; (iii) is
955 not offered alternative employment by the Authority; (iv) is not offered a position with the Authority for
956 which the employee is qualified; or (v) is offered a position by the Authority that requires relocation or
957 a reduction in salary is eligible for the severance benefits conferred by the provisions of the Workforce
958 Transition Act (§ 2.2-3200 et seq.). Any employee who accepts employment with the Authority has
959 voluntarily separated from state employment and is not eligible for the severance benefits conferred by
960 the provisions of the Workforce Transition Act.

961 C. Without limiting its power generally with respect to employees, the Authority may employ any
962 University employee utilized in the operation of the hospital facilities and assume obligations under any
963 employment agreement for such employee, and the University may assign any such contract to the
964 Authority.

965 D. The Authority and the University may enter into agreements providing for the purchase of
966 services of University employees utilized in the operation of the hospital facilities by paying
967 agreed-upon amounts to cover all or part of the salaries and other costs of such employees.

968 E. Notwithstanding any other provision of law to the contrary, any employee whose employment is
969 transferred to the Authority as a result of this chapter and who is a member of any plan for providing
970 health insurance coverage pursuant to Chapter 28 (§ 2.2-2800 et seq.) of Title 2.2 shall continue to be a
971 member of such health insurance plan under the same terms and conditions of such plan.

972 F. Notwithstanding subsection A of § 2.2-2818, the costs of providing health insurance coverage to
973 employees who elect to continue to be members of the state employees' health insurance plan shall be
974 paid by the Authority.

975 G. Any employee of the Authority may elect to become a member of any health insurance plan
976 established by the Authority. The Authority may (i) establish a health insurance plan for the benefit of
977 its employees, residents, and interns and (ii) enter into an agreement with the Department of Human
978 Resource Management providing for the coverage of its employees, interns, and residents under the state
979 employees' health insurance plan, provided that such agreement requires the Authority to pay the costs
980 of providing health insurance coverage under such plan.

981 H. Notwithstanding any other provision of law to the contrary, any employee whose employment is

982 transferred to the Authority as a result of this chapter and who is a member of the Virginia Retirement
 983 System or another retirement plan as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title
 984 51.1 shall continue to be a member of the Virginia Retirement System or such other authorized
 985 retirement plan under the same terms and conditions of such plan. Any such employee and any
 986 employee employed by the Authority between July 1, 1997, and June 30, 1998, who elected to be
 987 covered by the Virginia Retirement System may elect, during an open enrollment period from April 1,
 988 2001, through April 30, 2001, to become a member of the retirement ~~program~~ *plan* established by the
 989 Authority for the benefit of its employees pursuant to § 23.1-2416 by transferring assets equal to the
 990 actuarially determined present value of the accrued basic benefit as of the transfer date. The Authority
 991 shall reimburse the Virginia Retirement System for the actual cost of actuarial services necessary to
 992 determine the present value of the accrued basic benefit of employees who elect to transfer to the
 993 Authority's retirement plan. The following rules shall apply to such transfers:

994 1. With respect to any transferred employee who elects to remain a member of the Virginia
 995 Retirement System or another authorized retirement plan, the Authority shall collect and pay all
 996 employee and employer contributions to the Virginia Retirement System or such other authorized
 997 retirement plan for retirement in accordance with the provisions of Chapter 1 (§ 51.1-124.1 et seq.) of
 998 Title 51.1 for such transferred employees.

999 2. Transferred employees who elect to become members of the retirement ~~program~~ *plan* established
 1000 by the Authority for the benefit of its employees shall be given full credit for their creditable service as
 1001 defined in § 51.1-124.3, vesting and benefit accrual under the retirement ~~program~~ *plan* established by the
 1002 Authority. For any such employee, employment with the Authority shall be treated as employment with
 1003 any nonparticipating employer for purposes of the Virginia Retirement System or other retirement plan
 1004 as authorized by Article 4 (§ 51.1-125 et seq.) of Chapter 1 of Title 51.1.

1005 3. For transferred employees who elect to become members of the retirement ~~program~~ *plan*
 1006 established by the Authority, the Virginia Retirement System or other such authorized plan shall transfer
 1007 to the retirement plan established by the Authority assets equal to the actuarially determined present
 1008 value of the accrued basic benefit as of the transfer date. For the purposes of such calculation, the basic
 1009 benefit is the benefit accrued under the Virginia Retirement System or another authorized retirement
 1010 plan based on creditable service and average final compensation as defined in § 51.1-124.3 and
 1011 determined as of the transfer date. The actuarial present value shall be determined on the same basis,
 1012 using the same actuarial factors and assumptions used in determining the funding needs of the Virginia
 1013 Retirement System or such other authorized retirement plan so that the transfer of assets to the
 1014 retirement plan established by the Authority has no effect on the funded status and financial stability of
 1015 the Virginia Retirement System or other such authorized retirement plan.

1016 **§ 23.1-2607. Purchase of electric power and energy.**

1017 A. For purposes of this section:

1018 "Other party" means any other entity, including any (i) municipality, public institution of higher
 1019 education, or political subdivision, public authority, agency, or instrumentality of the Commonwealth, ~~or~~
 1020 *another* state, or the United States or (ii) partnership, limited liability company, nonprofit corporation,
 1021 electric cooperative, or investor-owned utility, whether created, incorporated, or otherwise organized and
 1022 existing under the laws of the Commonwealth ~~or~~, *another* state, or the United States.

1023 "Project" means any (i) system or facilities for the generation, transmission, transformation, or supply
 1024 of electrical power and energy by any means whatsoever, including fuel, fuel transportation, and fuel
 1025 supply resources; (ii) electric generating unit situated at a particular site in the continental United States;
 1026 (iii) interest in such system, facilities, or unit, whether an undivided interest as a tenant in common or
 1027 otherwise; or (iv) right to the output, capacity, or services of such system, facilities, or unit.

1028 B. The University may contract with any other party to buy power and energy to meet its present or
 1029 future requirements. Any such contract may provide that (i) the source of such power and energy is
 1030 limited to a specified project; (ii) replacement power and energy shall be provided; or (iii) the
 1031 University shall be obligated to make payments required by the contract whether the project is
 1032 completed, operable, or operating and notwithstanding the suspension, interruption, interference,
 1033 reduction, or curtailment of the output of a project or the amount of power and energy contracted for;
 1034 (iv) payments required by the contract (a) are not subject to any reduction, whether by offset or
 1035 otherwise, (b) are not conditioned upon the performance or nonperformance of any other party, (c) shall
 1036 be made solely from the revenues derived by the University from the ownership and operation of the
 1037 electric system of the University, (d) may be secured by a pledge of and lien upon the electric system of
 1038 the University, and (e) shall constitute an operating expense of the electric system of the University; (v)
 1039 in the event of default by the University or any other party to the contract in the performance of its
 1040 obligations for any project, the University or any other party to the contract for such project shall
 1041 succeed to the rights and interests and assume the obligations of the defaulting party, either pro rata or
 1042 as may be otherwise agreed upon in the contract; or (vi) no other party shall be obligated to provide

1043 power and energy in the event that (a) the project is inoperable, (b) the output of the project is subject
1044 to suspension, interference, reduction, or curtailment, or (c) a force majeure occurs.

1045 C. Notwithstanding any other charter or provision of law to the contrary, no such contract, with
1046 respect to the sale or purchase of capacity, output, power, or energy from a project, shall exceed 50
1047 years from the date that the project is estimated to be placed in normal continuous operation.

1048 D. The execution and effectiveness of any such contract are not subject to any authorizations and
1049 approvals by the Commonwealth or any agency, commission, instrumentality, or political subdivision of
1050 the Commonwealth except as specifically required by law.

1051 E. No obligation under any such contract shall constitute a legal or equitable pledge, charge, lien, or
1052 encumbrance upon any property of the University or upon any of its income, receipts, or revenues,
1053 except the revenues of its electric system, and the faith and credit of the University shall not be pledged
1054 for the payment of any obligation under any such contract.

1055 F. The University shall fix, charge, and collect rents, rates, fees, and charges for electric power and
1056 energy and other services, facilities, and commodities sold, furnished, or supplied through its electric
1057 system sufficient to provide revenues adequate to meet its obligations under any such contract and to
1058 pay any and all other amounts payable from or constituting a charge and lien upon such revenues,
1059 including amounts sufficient to pay the principal of and interest on bonds of the University issued for
1060 purposes relating to its electric system. Any pledge made by the University pursuant to this subsection is
1061 governed by the laws of the Commonwealth.

1062 **§ 23.1-2631. Executive director.**

1063 A. The principal administrative officer of the Water Center shall be an executive director who shall
1064 be appointed by the president of the University, subject to the approval of the board. The executive
1065 director shall be under the supervision of the president of the University.

1066 B. The executive director shall exercise all powers imposed upon him by law, carry out the specific
1067 duties imposed upon him by the president of the University, and develop appropriate policies and
1068 procedures, with the advice of the Virginia Water Resources Research Center Statewide Advisory Board,
1069 for (i) identifying priority research problems; (ii) collaborating with the General Assembly; federal, state,
1070 and local governmental agencies; and water user groups in the formulation of its research programs; (iii)
1071 selecting projects to be funded; and (iv) disseminating information and transferring technology designed
1072 to help resolve water and related land problems of the Commonwealth. ~~He~~ *The executive director* shall
1073 employ such personnel and secure such services as may be required to carry out the purposes of this
1074 article and expend appropriated funds and accept moneys for cost-sharing on projects funded with
1075 federal and private funds.

1076 **§ 23.1-2702. Powers and duties.**

1077 A. The board shall appoint all professors, teachers, and agents, *and* fix their salaries, and generally
1078 direct the affairs of the University.

1079 B. The board may confer degrees.

1080 **§ 23.1-2903. State Board; officers, meetings, and regulations.**

1081 A. The State Board shall elect a chairman from its membership and may provide for the election of
1082 one of its members as vice-chairman.

1083 B. The State Board shall meet at least four times annually and on the call of the chairman when in
1084 his opinion additional meetings are expedient or necessary.

1085 C. Eight members of the State Board shall constitute a quorum for all purposes.

1086 D. The main office of the State Board shall be in the Commonwealth.

1087 E. The State Board is ~~authorized to~~ *may* adopt necessary regulations for carrying out the purposes of
1088 this chapter.

1089 **§ 23.1-3131. Virginia Research Investment Fund.**

1090 A. There is hereby created in the state treasury a special nonreverting revolving fund to be known as
1091 the Virginia Research Investment Fund. The Fund shall be established on the books of the Comptroller.
1092 All moneys appropriated by the General Assembly for the Fund, and from any other sources public or
1093 private, shall be paid into the state treasury and credited to the Fund. Interest and other income earned
1094 on the Fund shall be credited to the Fund. Any moneys remaining in the Fund, including interest and
1095 other income thereon, at the end of each fiscal year shall not revert to the general fund but shall remain
1096 in the Fund.

1097 B. 1. Notwithstanding any other provision of law, the General Assembly may specifically designate
1098 that certain moneys appropriated to the Fund be invested, reinvested, and managed by the Board of the
1099 Virginia Retirement System as provided in § 51.1-124.38. The State Treasurer shall not be held liable
1100 for losses suffered by the Virginia Retirement System on investments made under the authority of this
1101 subsection.

1102 2. No more than \$4 million of moneys so invested, net of any administrative fee assessed pursuant to
1103 subsection E of § 51.1-124.38, may be awarded through grants or loans in a fiscal year for any purpose
1104 permitted by this article. At the direction of the Committee, the State Comptroller may annually request

1105 a disbursement of \$4 million from the moneys invested by the Board of the Virginia Retirement System,
1106 to be held with other moneys in the Fund not subject to such investment. At the end of each fiscal year,
1107 if less than \$4 million of such annual allocation is awarded as grants or loans in a calendar year, the
1108 Comptroller shall return the remainder of the annual \$4 million allocation to the Board of the Virginia
1109 Retirement System for reinvestment pursuant to § 51.1-124.38.

1110 3. Any loans awarded pursuant to this article shall be paid by the Comptroller from the \$4 million
1111 annual allocation set forth in subdivision 2. The recipient of a loan shall repay the loan pursuant to the
1112 terms set forth by the Committee. At the end of each fiscal year, the Comptroller shall return any
1113 repayments received from loan recipients to the Board of the Virginia Retirement System for
1114 reinvestment pursuant to § 51.1-124.38.

1115 C. Moneys in the Fund shall be used solely for grants and loans to (i) promote research and
1116 development excellence in the Commonwealth; (ii) foster innovative and collaborative research,
1117 development, and commercialization efforts in the Commonwealth in projects and programs with a high
1118 potential for economic development and job creation opportunities; (iii) position the Commonwealth as a
1119 national leader in science-based and technology-based research, development, and commercialization;
1120 (iv) attract and effectively recruit and retain eminent researchers to enhance research superiority at public
1121 institutions of higher education; and (v) encourage cooperation and collaboration among higher education
1122 research institutions, and with the private sector, in areas and with activities that foster economic
1123 development and job creation in the Commonwealth. Areas of focus for awards shall be those areas
1124 identified in the Commonwealth Research and Technology Strategic Roadmap, and shall include ~~but not~~
1125 ~~be limited to~~ the biosciences, personalized medicine, cybersecurity, data analytics, and other areas
1126 designated in the general appropriation act.

1127 D. The disbursement of grants and loans from the Fund shall be made by the State Comptroller at
1128 the written request of the Committee.

1129 **§ 23.1-3133. Award from Virginia Research Investment Fund.**

1130 A. The Council, in consultation with the Committee, shall establish guidelines, procedures, and
1131 objective criteria for the application for and award of grants and loans from the Fund. Such guidelines,
1132 procedures, and criteria, and any updates thereto, shall be submitted to the House Committee on
1133 Appropriations and the Senate Committee on Finance. The criteria for the award of grants and loans
1134 shall consider other grants, awards, loans, or funds awarded to the proposed program or project by the
1135 Commonwealth and shall require an applicant to indicate other applications for state grants, awards,
1136 loans, or funds currently pending at the time of the application for an award from the Fund. The criteria
1137 shall consider the potential of the program or project for which a grant or loan is sought to (i) culminate
1138 in the commercialization of research; (ii) culminate in the formation or spin-off of viable bioscience,
1139 biotechnology, cybersecurity, genomics, or similar companies; (iii) promote the build-out of scientific
1140 areas of expertise in science and technology; (iv) promote applied research and development; (v) provide
1141 modern facilities or infrastructure for research and development; (vi) result in significant capital
1142 investment and job creation; or (vii) promote collaboration among the public institutions of higher
1143 education ~~in the Commonwealth~~. Such criteria shall also require that the program or project for which a
1144 grant or loan is sought be related to an area identified in the Commonwealth Research Technology
1145 Strategic Roadmap.

1146 B. Grants and loans may be awarded to public institutions of higher education ~~in the Commonwealth~~
1147 or collaborations between public institutions of higher education ~~in the Commonwealth~~ and private
1148 entities. Any award from the Fund shall require a match of funds at least equal to the amount of the
1149 award.

1150 C. Applications for grants and loans from the Fund shall be received by the Council in accordance
1151 with the procedures developed pursuant to subsection A. Upon confirmation that an application is
1152 complete, the Council shall forward the application to an entity with recognized science and technology
1153 expertise for a review and certification of the scientific merits of the proposal, including a scoring or
1154 prioritization of applicant programs and projects deemed viable by the reviewing entity. Such entities
1155 include; ~~but are not limited to~~, the Virginia Biosciences Health Research Corporation, the Innovation and
1156 Entrepreneurship Investment Authority, the Virginia Academy of Science, Engineering and Medicine, or
1157 any other entity deemed appropriate by the Council, including a scientific advisory committee created by
1158 the Council for the sole purpose of reviewing one or more applications received pursuant to this article.

1159 D. Any proposal receiving a favorable evaluation pursuant to subsection C shall be forwarded, along
1160 with the scoring or prioritization, to the Committee for further review and a decision whether to award
1161 the proposal a grant or loan from the Fund. The award of a grant or loan from the Fund shall be subject
1162 to any terms and conditions set forth by the Committee for the award. All decisions by the Committee
1163 shall be final and not subject to further review or appeal. The Governor may announce any award
1164 approved by the Committee.

1165 **§ 23.1-3208. Regulations.**

1166 A. The board or its executive committee may adopt regulations concerning the use and visitation of
 1167 properties under the control of the Jamestown-Yorktown Foundation to protect and secure such
 1168 properties and the public enjoyment of such properties.

1169 B. Any person who knowingly violates a regulation of the Foundation may be requested by an agent
 1170 or employee of the Foundation to leave the property and upon the failure of such person to do so is
 1171 guilty of trespass as provided in § 18.2-119.

1172 **§ 23.1-3216. Virginia Museum of Fine Arts established.**

1173 The Virginia Museum of Fine Arts (*the Museum*) is established as an educational institution in the
 1174 Commonwealth and a public body and instrumentality for the dissemination of education.

1175 **§ 23.1-3217. Board of trustees.**

1176 A. The management and control of the Virginia Museum of Fine Arts (~~the Museum~~) and its building,
 1177 contents, furnishings, grounds, and other properties is vested in a board of trustees (the board) composed
 1178 of (i) the Governor, the Speaker of the House of Delegates, and the mayor of the City of Richmond,
 1179 who shall serve ex officio, and (ii) at least 25 but not more than 35 nonlegislative citizen members.
 1180 Nonlegislative citizen members shall be appointed by the Governor after consideration of a list of
 1181 nominees from the Museum submitted at least 60 days before the expiration of the member's term for
 1182 which the nominations are being made.

1183 B. Nonlegislative citizen members shall be appointed for terms of five years. No nonlegislative
 1184 citizen member is eligible to serve more than two consecutive five-year terms; however, a member
 1185 appointed to serve an unexpired term is eligible to serve two consecutive five-year terms immediately
 1186 succeeding such unexpired term.

1187 C. Nine members shall constitute a quorum at any meeting and a majority vote of those members
 1188 present shall control in all matters.

1189 D. The board shall adopt bylaws governing its organization and procedure and may alter and amend
 1190 the bylaws.

1191 E. The board shall elect one of its members president of the Museum.

1192 F. The board may provide for an executive committee composed of at least three members that may
 1193 exercise the powers vested in it and perform the duties imposed upon it by the board.

1194 **§ 25.1-100. Definitions.**

1195 As used in this title, unless the context requires a different meaning:

1196 "Appraisal" means a written statement independently and impartially prepared by a qualified
 1197 appraiser setting forth an opinion of defined value of an adequately described property as of a specific
 1198 date, supported by the presentation and analysis of relevant market information.

1199 "Body determining just compensation" means a panel of commissioners empaneled pursuant to
 1200 § 25.1-227.2, jury selected pursuant to § 25.1-229, or the court if neither a panel of commissioners nor a
 1201 jury is appointed or empaneled.

1202 "Court" means the court having jurisdiction as provided in § 25.1-201.

1203 "Date of valuation" means the time of the lawful taking by the petitioner, or the date of the filing of
 1204 the petition pursuant to § 25.1-205, whichever occurs first.

1205 "Freeholder" means any person owning an interest in land in fee, including a person owning a
 1206 condominium unit.

1207 "Land" means real estate and all rights and appurtenances thereto, together with the structures and
 1208 other improvements thereon, and any right, title, interest, estate or claim in or to real estate.

1209 "Locality" or "local government" means a county, city, or town, as the context may require.

1210 "Lost access" means a material impairment of direct access to property, a portion of which has been
 1211 taken or damaged as set out in subsection B of § 25.1-230.1. This definition of the term "lost access"
 1212 shall not diminish any existing right or remedy, and shall not create any new right or remedy other than
 1213 to allow the body determining just compensation to consider a change in access in awarding just
 1214 compensation.

1215 "Lost profits" means a loss of business profits, as defined in § 25.1-230.1, subject to adjustment
 1216 using generally accepted accounting principles consistently applied, from a business or farm operation
 1217 for a period not to exceed (i) three years from the date of valuation if less than the entire parcel of
 1218 property is taken or (ii) one year from the date of valuation if the entire parcel of property is taken that
 1219 is suffered as a result of a taking of the property on which the business or farm operation is located,
 1220 provided (a) the business is owned by the owner of the property taken, or by a tenant whose leasehold
 1221 interest grants the tenant exclusive possession of substantially all the property taken, or (b) the farm
 1222 operation is operated by the owner of the property taken, or by a tenant using for a farm operation the
 1223 property taken, to the extent that the loss is determined and proven pursuant to subsection C of
 1224 § 25.1-230.1. This definition of the term "lost profits" shall not create any new right or remedy or
 1225 diminish any existing right or remedy other than to allow the body determining just compensation to
 1226 consider lost profits in awarding just compensation if a person asserts a right to lost profits in a claim
 1227 for compensation.

1228 "Owner" means any person who owns property, provided that the person's ownership of the property
1229 is of record in the land records of the clerk's office of the circuit court of the county or city where the
1230 property is located. The term "owner" shall not include trustees or beneficiaries under a deed of trust,
1231 any person with a security interest in the property, or any person with a judgment or lien against the
1232 property. This definition of the term "owner" shall not affect in any way the valuation of property.

1233 "Person" means any individual; firm; cooperative; association; corporation; limited liability company;
1234 trust; business trust; syndicate; partnership; limited liability partnership; joint venture; receiver; trustee in
1235 bankruptcy or any other person acting in a fiduciary or representative capacity, whether appointed by a
1236 court or otherwise; club, society or other group or combination acting as a unit; the Commonwealth or
1237 any department, agency or instrumentality thereof; any city, county, town, or other political subdivision
1238 or any department, agency or instrumentality thereof; or any interstate body to which the
1239 Commonwealth is a party.

1240 "Petitioner" or "condemnor" means any person who possesses the power to exercise the right of
1241 eminent domain and who seeks to exercise such power. The term "petitioner" or "condemnor" includes a
1242 state agency.

1243 "Property" means land and personal property, and any right, title, interest, estate or claim in or to
1244 such property.

1245 "State agency" means any (i) department, agency or instrumentality of the Commonwealth; (ii) public
1246 authority, municipal corporation, local governmental unit or political subdivision of the Commonwealth
1247 or any department, agency or instrumentality thereof; (iii) person who has the authority to acquire
1248 property by eminent domain under state law; or (iv) two or more of the aforementioned that carry out
1249 projects that cause persons to be displaced.

1250 "State institution" means any (i) ~~educational~~ institutional institution enumerated in § 23.1-1100 or (ii) state
1251 hospital or state training center operated by the Department of Behavioral Health and Developmental
1252 Services.

1253 **2. That the provisions of this act shall be effective retroactively to October 1, 2016**

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