

CODE OF VIRGINIA  
TITLE 23 - EDUCATIONAL INSTITUTIONS  
CHAPTER 4.10 - RESTRUCTURED HIGHER EDUCATION  
FINANCIAL AND ADMINISTRATIVE OPERATIONS ACT

Current as of July 1, 2008

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

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

1. To dispose of their surplus materials at the location where the surplus materials are held and to retain any proceeds from such disposal as provided in subdivision B 14 of § [2.2-1124](#);
2. To have the option, as provided in subsection C of § [2.2-1132](#) and pursuant to the conditions and provisions under such subsection, to contract with a building official of the locality in which construction is taking place and for such official to perform any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ [36-97](#) et seq.) pursuant to subsection C of § [36-98.1](#);
3. For those public institutions of higher education that have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act, as provided in subsection C of § [2.2-1132](#), to enter into contracts for specific construction projects without the preliminary review and approval of the Division of Engineering and Buildings of the Department of General Services, provided such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.) and utilize the general terms and conditions for those forms of procurement approved by the Division and the Office of the Attorney General;
4. To acquire easements as provided in subdivision 4 of § [2.2-1149](#);
5. To enter into an operating income lease or capital lease pursuant to the conditions and provisions provided in subdivision 5 of § [2.2-1149](#);
6. To convey an easement pertaining to any property such institution owns or controls as provided in subsection C of § [2.2-1150](#);
7. In accordance with the conditions and provisions of subdivision C 2 of § [2.2-1153](#), to sell surplus real property valued at less than \$5 million, which is possessed and controlled by the institution;
8. For purposes of compliance with § [2.2-4310](#), to procure goods, services, and construction from a vendor that the institution has certified as a small, women-, and minority-owned business enterprise pursuant to the conditions and provisions provided in § [2.2-1404.1](#);
9. To be exempt from review of their budget request for information technology by the CIO as provided in subdivision A 4 of § [2.2-2007](#);
10. To be allowed to establish policies for the designation of administrative and professional faculty positions at the institution pursuant to the conditions and provisions provided in subsection E of § [2.2-2901](#);
11. To receive the financial benefits described under § [2.2-5005](#) pursuant to the conditions and provisions of such section;

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

13. To utilize as methods of procurement a fixed price, design-build or construction management contract notwithstanding the provisions of § [2.2-4306](#); and

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

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

B. The Board of Visitors of a public institution of higher education shall commit to the Governor and the General Assembly by August 1, 2005, through formal resolution adopted according to its own bylaws, to meeting the state goals specified below, and shall be responsible for ensuring that such goals are met, in addition to such other responsibilities as may be prescribed by law. Each such institution shall commit to the Governor and the General Assembly to:

1. Consistent with its institutional mission, provide access to higher education for all citizens throughout the Commonwealth, including underrepresented populations, and, consistent with subdivision 4 of § [23-9.6:1](#) and in accordance with anticipated demand analysis, meet enrollment projections and degree estimates as agreed upon with the State Council of Higher Education for Virginia. Each such institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is met;

2. Consistent with § [23-9.2:3.03](#), ensure that higher education remains affordable, regardless of individual or family income, and through a periodic assessment, determine the impact of tuition and fee levels net of financial aid on applications, enrollment, and student indebtedness incurred for the payment of tuition and fees;

3. Offer a broad range of undergraduate and, where appropriate, graduate programs consistent with its mission and assess regularly the extent to which the institution's curricula and degree programs address the Commonwealth's need for sufficient graduates in particular shortage areas, including specific academic disciplines, professions, and geographic regions;

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

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

6. Consistent with its institutional mission, develop articulation agreements that have uniform application to all Virginia community colleges and meet appropriate general education and program requirements at the four-year institution, provide additional opportunities for associate degree graduates to be admitted and enrolled, and offer dual enrollment programs in cooperation with high schools;

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

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

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

10. Prepare a six-year financial plan consistent with § [23-9.2:3.03](#);

11. Conduct the institution's business affairs in a manner that maximizes operational efficiencies and economies for the institution, contributes to maximum efficiencies and economies of state government as a whole, and meets the financial and administrative management standards as specified by the Governor pursuant to § [2.2-5004](#) and included in the appropriation act that is in effect, which shall include best practices for electronic procurement and leveraged purchasing, information technology, real estate portfolio management, and diversity of suppliers through fair and reasonable consideration of small, women-, and minority-owned business enterprises; and

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

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

C. As provided in § [23-9.6:1.01](#), the State Council of Higher Education shall in consultation with the respective chairmen of the House Committees on Education and Appropriations and the Senate Committees on Finance and Education and Health or their designees, representatives of public institutions of higher education, and such other state officials as may be designated by the Governor, develop objective measures of educational-related performance and institutional performance benchmarks for such objective measures. At a minimum, the State Council shall develop such objective measures and institutional performance benchmarks for the goals and objectives set forth in subdivisions B 1 through B 10 and B 12. In addition, the Governor shall develop objective measures of financial and administrative management performance and related institutional performance benchmarks for the goals and objectives set forth in subdivision B 11.

As provided in subsection C of § [23-9.6:1.01](#), any public institution of higher education that has been certified during the fiscal year by the State Council of Higher Education for Virginia as meeting the institutional performance benchmarks in effect for the fiscal year as set forth in the general appropriation act shall be provided the financial benefits under § [2.2-5005](#). Such benefits shall first be provided as determined under such section.

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

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

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

a. (i) Its most current and unenhanced bond rating received from (a) Moody's Investors Service, Inc., (b) Standard & Poor's, Inc., or (c) Fitch Investor's Services, Inc. is at least AA- (i.e., AA minus) or its equivalent, provided that such bond rating has been received within the last three years of the date that the initial agreement is entered into or (ii) the institution has (a) participated in decentralization pilot programs in the areas of finance and capital outlay, (b) demonstrated management competency in those two areas as evidenced by a written certification from the Cabinet Secretary or Secretaries designated by the Governor, (c) received additional operational authority under a memorandum of understanding pursuant to § [23-38.90](#) in at least one functional area, and (d) demonstrated management competency in that area for a period of at least two years. In submitting "The Budget Bill" for calendar year 2005 pursuant to subsection A of § [2.2-1509](#), the Governor shall include criteria for

determining whether or not an institution has demonstrated the management competency required by clause (ii) of this subdivision;

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

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

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

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

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

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

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

4. The right and power by the Governor to void a management agreement shall be expressly included in each management agreement. The management agreement shall provide that if the Governor makes a written

determination that a public institution of higher education that has entered into a management agreement with the Commonwealth is not in substantial compliance with the terms of the agreement or with the requirements of this chapter in general, (i) the Governor shall provide a copy of that written determination to the chairmen of the Board of Visitors or other governing body of the public institution of higher education and to the members of the General Assembly, and (ii) the institution shall develop and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into substantial compliance with the terms of the management agreement and with the requirements of this chapter, as soon as practicable, and shall provide a copy of such corrective action plan to the members of the General Assembly. If after a reasonable period of time after the corrective action plan has been implemented by the institution, the Governor determines that the institution is not yet in substantial compliance with the management agreement or the requirements of this chapter, the Governor may void the management agreement. Upon the Governor voiding a management agreement, the affected public institution of higher education shall not be allowed to exercise any restructured financial or operational authority pursuant to the provisions of Subchapter 3 (§ [23-38.91](#) et seq.) unless and until the institution enters into a subsequent management agreement with the Secretary or Secretaries designated by the Governor or the void management agreement is reinstated by the General Assembly.

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

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

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

(2005, cc. 933, 945; 2006, c. 775.)

#### **§ 23-38.89. Definitions.**

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

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

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

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

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

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

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

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

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

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

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

(2005, cc. 933, 945.)

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

Effective July 1, 2008, any public institution of higher education may enter into a memorandum of understanding with the appropriate Cabinet Secretary or Secretaries, as designated by the Governor, for additional operational authority in any operational area or areas adopted by the General Assembly in accordance with law provided that

the authority granted in the memorandum of understanding is consistent with that institution's ability to manage its operations in the particular area or areas and provided that the following general criteria are met:

1. The institution has received and maintained Council certification pursuant to § [23-9.6:1.01](#) for the most recent year that the Council has completed certification;
2. An absolute two-thirds or more of the institution's governing body shall have voted in the affirmative for a resolution expressing the sense of the body that the institution is qualified to be, and should be, governed by memoranda of understanding as provided in this chapter; and
3. The institution must adopt at least one new education-related measure for each area of operational authority for which a memorandum of understanding is requested. Each education-related measure and its respective target shall be developed in consultation with the Secretary of Finance, Secretary of Education, the appropriate Cabinet Secretary, and the Council. Each education-related measure and its respective target must be approved by the Council and shall become part of the certification required by § [23-9.6:1.01](#).

Within 15 days of receipt of a request from a public institution of higher education to enter into a memorandum of understanding as provided herein, the Cabinet Secretary or Secretaries receiving that request shall notify the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance of the request. The Cabinet Secretary or Secretaries shall determine within 90 calendar days whether or not to enter into the requested memorandum of understanding, or some variation thereof. If the determination is to enter into a memorandum of understanding with the institution, the Cabinet Secretary or Secretaries shall forward a copy of the governing body's resolution and a copy of the memorandum of understanding to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance. Each initial memorandum of understanding shall remain in effect for a period of three years. Subsequent memoranda of understanding shall remain in effect for a period of five years. If the determination is not to enter into a memorandum of understanding with the institution, the Cabinet Secretary or Secretaries shall notify the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance of the reasons for denying the institution's request. If an institution's request is denied, nothing in this section shall prohibit the institution from submitting a future request to enter into a memorandum of understanding pursuant to this section.

(2005, cc. 933, 945; 2008, cc. 824, 829.)

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

A. The Board of Visitors and administration of a public university or college of the Commonwealth that meets the requirements of this subchapter to demonstrate the ability to manage successfully the administrative and financial operations of the institution without jeopardizing the financial integrity and stability of the institution may enter into negotiation with the Governor to develop a management agreement with the Commonwealth, as provided in this subchapter. Consistent with the terms of the management agreement, the Board of Visitors shall assume full responsibility for management of the institution, subject to the requirements and conditions set forth in this subchapter, the general requirements for management agreements as provided in § [23-38.88](#), and the specific management agreement with the Commonwealth. The Board of Visitors shall be fully accountable for (a) the management of the institution of higher education as provided in this subchapter, (b) meeting the requirements of §§ [2.2-5004](#), [23-9.2:3.03](#), and [23-9.6:1.01](#), and (c) meeting such other provisions as may be set forth in the management agreement with the Commonwealth.

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

(2005, cc. 933, 945.)

**§ 23-38.92. Scope of subchapter.**

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

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

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

(2005, cc. 933, 945.)

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

A. For purposes of §§ [2.2-5004](#), [23-1.01](#), [23-1.1](#), [23-2](#), [23-2.1](#), [23-2.1:1](#), [23-3](#), [23-4.2](#), [23-4.3](#), [23-4.4](#), [23-7.1:02](#), [23-7.4](#), [23-7.4:1](#), [23-7.4:2](#), [23-7.4:3](#), [23-7.5](#), [23-8.2:1](#), [23-9.1](#), [23-9.2](#), [23-9.2:3](#), [23-9.2:3.03](#), [23-9.2:3.1](#) through [23-9.2:5](#), [23-9.6:1.01](#), and Chapter 4.9 (§ [23-38.75](#) et seq.), each covered institution shall remain a public institution of higher education of the Commonwealth following its conversion to a covered institution governed by this chapter, and shall retain the authority granted and any obligations required by such provisions. In addition, each covered institution shall retain the authority, and any obligations related to the exercise of such authority, that is granted to institutions of higher education pursuant to Chapter 1.1 (§ [23-9.3](#) et seq.); Chapter 3 (§ [23-14](#) et seq.); Chapter 3.2 (§ [23-30.23](#) et seq.); Chapter 3.3 (§ [23-30.39](#) et seq.); Chapter 4 (§ [23-31](#) et seq.); Chapter 4.01 (§ [23-38.10:2](#) et seq.); Chapter 4.1 (§ [23-38.11](#) et seq.); Chapter 4.4 (§ [23-38.45](#) et seq.); Chapter 4.4:1 (§ [23-38.53:1](#) et seq.); Chapter 4.4:2 (§ [23-38.53:4](#) et seq.); Chapter 4.4:3 (§ [23-38.53:11](#)); Chapter 4.4:4 (§ [23-38.53:12](#) et seq.); Chapter 4.5 (§ [23-38.54](#) et seq.); Chapter 4.7 (§ [23-38.70](#) et seq.); Chapter 4.8 (§ [23-38.72](#) et seq.); and Chapter 4.9 (§ [23-38.75](#) et seq.).

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

(2005, cc. 933, 945.)

**§ 23-38.94. Audits.**

The Auditor of Public Accounts or his legally authorized representatives shall audit annually accounts of all covered institutions and shall distribute copies of each annual audit to the Governor and to the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance. Pursuant to § [30-133](#), the Auditor of Public Accounts and his legally authorized representatives shall examine annually the accounts and books of each such institution; however, a covered institution shall not be deemed to be a state or governmental agency, advisory

agency, public body, or agency or instrumentality for purposes of Chapter 14 (§ [30-130](#) et seq.) of Title 30 except for those provisions in such chapter that relate to requirements for financial recordkeeping and bookkeeping. Each covered institution shall be subject to periodic external review by the Joint Legislative and Audit Review Commission and such other reviews and audits as shall be required by law.

(2005, cc. 933, 945.)

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

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

(2005, cc. 933, 945; 2007, c. 945.)

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

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

(2005, cc. 933, 945.)

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

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

1. An absolute two-thirds, or more, of the institution's governing body shall have voted in the affirmative for a resolution expressing the sense of the body that the institution is qualified to be, and should be, governed by this subchapter.
2. Following such affirmative vote by such governing body, the institution shall submit to the Governor a written request for his approval to be governed by this subchapter. A copy of such request shall be sent to the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance and the Senate Committee on Education and Health. Such written request shall provide documentation substantiating that: (i) the institution possesses the necessary administrative infrastructure, experience, and expertise to perform successfully its public educational mission as a covered institution; (ii) the institution is financially able to operate as a covered institution without jeopardizing the financial integrity and stability of the institution; (iii) the institution consistently meets the financial and administrative management standards pursuant to § [2.2-5004](#); and (iv) the institution's governing body has adopted performance and accountability standards, in addition to any institutional performance benchmarks included in the general appropriation act and developed pursuant to § [23-9.6:1.01](#), against which its implementation of this additional authority can be measured.

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

C. Any such management agreement, executed by the designated Cabinet Secretaries and governing body of the institution shall be submitted by no later than November 15 of any given year to the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate Committee on Education and Health. The Governor shall include a recommendation for approval of the management agreement with the public institution of higher education in "The Budget Bill" submitted pursuant to subsection A of § [2.2-1509](#) or in his gubernatorial amendments submitted pursuant to subsection E of § [2.2-1509](#) due by the December 20 that immediately follows the date of submission of the management agreement to such Committees. Following the General Assembly's consideration of whether to approve or disapprove the management agreement as recommended, if the management agreement is approved as part of the general appropriation act, it shall become effective on the effective date of such general appropriation act.

(2005, cc. 933, 945.)

**§ 23-38.98. Revocation of management agreement.**

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

(2005, cc. 933, 945.)

**§ 23-38.99. Powers and authority generally.**

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

1. To make and execute contracts, guarantees, or any other instruments and agreements necessary or convenient for the exercise of its powers, authority, and functions including, without limitation, to make and execute contracts with persons to operate and manage any or all of the institution's facilities or operations, and to incur liabilities and secure the obligations of any entity or individual; provided, however, that no covered institution may pledge the faith and credit of the Commonwealth or enter into an indemnification agreement or binding arbitration agreement contrary to the law of Virginia applicable to state agencies.
2. To conduct or engage in any lawful business, activity, effort, or project consistent with the institution's purposes or necessary or convenient to exercise its powers and authority.
3. To procure such insurance, participate in such insurance plans, provide such self-insurance, continue participation in the Commonwealth's insurance or self-insurance plans, continue to participate in the Commonwealth's risk management programs, continue participation in the Virginia Retirement System or other Commonwealth sponsored retirement plans subject to the conditions and provisions of Article 6 (§ [23-38.114](#) et seq.) of this subchapter, or any combination of the foregoing, as provided in this subchapter. The purchase of insurance, participation in an insurance plan, or creation of a self-insurance plan by the institution shall not be deemed a waiver or relinquishment of any sovereign immunity to which the institution or its officers, directors, employees, or agents are otherwise entitled. The fact that a covered institution is governed by this subchapter shall not disqualify it from participating in any Commonwealth or Virginia Retirement System insurance, self-insurance, or risk management program on the same terms and conditions applicable to other state agencies and other public institutions of higher education.

(2005, cc. 933, 945.)

**§ 23-38.100. Operation of projects.**

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

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

(2005, cc. 933, 945.)

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

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

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

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

D. In carrying out any activities authorized by this subchapter, a covered institution may provide appropriate assistance, including (i) making loans from its funds, other than general fund appropriations or proceeds of bonds issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if such issuance is Commonwealth general fund supported, of the Constitution of Virginia, and (ii) providing the time of its employees to corporations, partnerships, associations, joint ventures or other entities, whether or not such corporations, partnerships, associations, joint ventures or other entities are owned or controlled in whole or in part, directly or indirectly, by such institution.

(2005, cc. 933, 945.)

**§ 23-38.102. Campus police.**

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

Campus police officers of a covered institution shall be eligible to participate in the same state-sponsored retirement plans, and on the same terms and conditions, that campus police officers of other public institutions of higher education are eligible to participate in.

(2005, cc. 933, 945.)

**§ 23-38.103. Tuition, fees, rentals, and other charges; moneys.**

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

(2005, cc. 933, 945.)

**§ 23-38.104. Financial operations of covered institutions.**

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

B. Subject to the express terms of the management agreement described in § [23-38.88](#), in managing its operations and finances, the Board of Visitors of a covered institution shall have sole authority to establish tuition, fee, room, board, and other charges consistent with sum sufficient appropriation authority for all nongeneral funds as provided by the Governor and the General Assembly in the Commonwealth's biennial appropriations authorization. The Board of Visitors shall include the institution's commitment to provide need-based grant aid for middle- and lower-income Virginia students in a manner that encourages student enrollment and progression without respect to potential increases in tuition and fees. In the event that any or all of the nongeneral funds are retained by the institution, the institution shall invest such funds consistent with an investment policy established by the Board of Visitors and retain all income earned on such investments. In the event that any or all of the nongeneral funds are held on behalf of the institution by the Commonwealth of Virginia, the institution shall receive a share of the income earned by the Commonwealth on the investment of such funds as provided in § [2.2-5005](#).

C. The management agreement described in § [23-38.88](#) shall include the quantification of cost savings realized as a result of the additional operational flexibility provided pursuant to this subchapter.

D. A covered institution may enter into any contract which the institution determines to be necessary or appropriate to place any bond or investment of the institution, in whole or in part, on the interest rate, cash flow, or other basis desired by the institution, which contract may include, without limitation, contracts commonly known as interest rate swap agreements, and futures or contracts providing for payments based on levels of, or

changes in, interest rates. These contracts or arrangements may be entered into by the institution in connection with, incidental to, entering into, or maintaining any (i) agreement that secures bonds, notes, or other obligations or (ii) investment or contract providing for investment, otherwise authorized by law, including but not limited to § [23-38.105](#). These contracts and arrangements may contain such payment, security, default, remedy, and other terms and conditions as determined by the institution, after giving due consideration to the creditworthiness of the counterpart or other obligated party, including any rating by any nationally recognized rating agency, and any other criteria as may be appropriate. Any money set aside and pledged to secure payments of bonds, notes or other obligations or any of the contracts entered into pursuant to this section may be pledged to and used to service any of the contracts or agreements entered into pursuant to this section.

(2005, cc. 933, 945.)

**§ 23-38.105. Investments of operating funds.**

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

(2005, cc. 933, 945.)

**§ 23-38.106. Records of financial transactions.**

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

(2005, cc. 933, 945.)

**§ 23-38.107. Financing and indebtedness.**

A. A covered institution shall have the authority to:

1. Borrow money and issue bonds, notes, or other obligations as provided in this subchapter and to purchase such bonds, notes or other obligations;
2. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments with, the Virginia Public Building Authority and the Virginia College Building Authority, which authorities are authorized to borrow money and make and issue negotiable notes, bonds, notes or other obligations and other evidences of indebtedness to provide such financing relating to facilities or any project; and
3. Seek financing from, incur or assume indebtedness to, and enter into contractual commitments with the Commonwealth as otherwise provided by law relating to the institution's facilities or any project.

B. Notwithstanding the provisions of this chapter, no covered institution shall be deemed to be exempt from any requirement or covenant contained in any outstanding bonds, notes, or other evidences of indebtedness.

(2005, cc. 933, 945.)

**§ 23-38.108. Power to issue bonds, notes or other obligations.**

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

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

C. A covered institution may issue such types of bonds, notes, or other obligations as it may determine are appropriate consistent with debt capacity and management policies and guidelines established by its Board of Visitors, including, without limitation, bonds, notes or other obligations payable as to principal and interest from any one or more of the following sources: (i) its revenues generally; (ii) income and revenues derived from the operation, sale, or lease of a particular project or projects, whether or not they are financed or refinanced from the proceeds of such bonds, notes, or other obligations; (iii) funds realized from the enforcement of security interests or other liens or obligations securing such bonds, notes, or other obligations; (iv) proceeds from the sale of bonds, notes, or other obligations; (v) payments under letters of credit, policies of municipal bond insurance, guarantees, or other credit enhancements; (vi) any reserve or sinking funds created to secure such payment; (vii) accounts receivable of such institution; or (viii) other available funds of such institution.

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

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

F. It shall be lawful for any bank or trust company within or without the Commonwealth to serve as depository of the proceeds of bonds, notes, or other obligations or of other revenues of a covered institution and to furnish indemnifying bonds, notes, or other obligations or to pledge such securities as may be required by such institution, provided that any such deposits shall be collateralized in accordance with the Security for Public Deposits Act (§ [2.2-4400](#) et seq.) in the case of a bank or savings institution or in accordance with the Trust Subsidiary Act (§ [6.1-32.1](#) et seq.) in the case of a trust company.

(2005, cc. 933, 945.)

**§ 23-38.109. Capital projects.**

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

B. Except as otherwise provided in subdivision C 2, capital projects undertaken at a covered institution may be exempt from any capital outlay oversight performed or required by the Department of General Services, the Division of Engineering and Buildings, the Department of Planning and Budget, and any other state agency that supports the functions performed by these departments.

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

1. Any capital project undertaken at a covered institution shall be subject to the environmental, historic preservation and conservation requirements of state statutes that are generally applicable to capital projects in the Commonwealth. For purposes of this subdivision, "capital project" means a capital project as defined in § [23-38.89](#) costing \$300,000 or more; and

2. If the capital project is funded in whole or in part with a general fund appropriation for that purpose or proceeds from bonds issued under Article X, Section 9(a), 9(b), or 9(c), or 9(d), if such issuance is Commonwealth general fund supported, of the Constitution of Virginia, the project shall remain subject to such pre-appropriation approvals as are in effect from time to time within the executive and legislative branches of state government, but such project may nevertheless be exempt from any and all state post-appropriation review, approval, administrative or other policy or procedure functions performed or required by the Department of General Services, the Division of Engineering and Buildings, the Department of Planning and Budget, and any other state agency that supports the functions performed by these departments, subject to the terms of any management agreement.

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

D. A covered institution shall have the authority to designate its own building official who shall be a full-time employee and who is hereby authorized to determine the suitability for occupancy of, and to issue certifications for building occupancy for, all capital projects undertaken at that institution, and who, prior to issuing any such certification, shall ensure that the Virginia Uniform Statewide Building Code (§ [36-97](#) et seq.) requirements are met for that capital project and that such project has been inspected by the State Fire Marshal or his designee. When serving as the building official, such individual shall report directly and exclusively to the Board of Visitors of the institution and shall be subject to review by the appropriate personnel in the Department of General Services. The designated official shall be certified by the Department of Housing and Community Development to perform this function. The individual employed or contracted to serve in such capacity shall have adequate resources and staff who are certified by the Department of Housing and Community Development in accordance with § [36-137](#) for such purpose, and who shall review plans, specifications, and documents for compliance with codes and standards

and perform required inspections of the work in progress and the completed project. No individual licensed professional architect or engineer hired or contracted to perform these functions shall also perform other code-related design, construction, facilities-related project management or facilities management functions for the institution on the same project.

(2005, cc. 933, 945.)

**§ 23-38.110. Procurement; discrimination prohibited; participation of small, women-, and minority-owned business enterprises.**

A. Subject to the express provisions of the management agreement described in § [23-38.88](#), covered institutions may be exempt from the provisions of the Virginia Public Procurement Act (§ [2.2-4300](#) et seq.), except for § [2.2-4342](#) (which section shall not be construed to require compliance with the prequalification application procedures of subsection B of § [2.2-4317](#)); provided, however, that any deviations from the Virginia Public Procurement Act approved in a Management Agreement shall be uniform across all covered institutions; and provided further that the governing body of a covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of goods and services, including professional services, that shall be based upon competitive principles and shall in each instance seek competition to the maximum practical degree. The policies shall implement a system of competitive negotiation for professional services pursuant to subdivisions 1, 2, and 3 a of the defined term "competitive negotiation" under § [2.2-4301](#), shall prohibit discrimination because of race, religion, color, sex or national origin of the bidder or offeror in the solicitation or award of contracts, shall incorporate the prompt payment principles of §§ [2.2-4350](#) and [2.2-4354](#), and shall consider the impact on correctional enterprises under § [53.1-47](#).

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

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

D. As part of any procurement provisions of a management agreement, the governing board of a covered institution shall identify the public, educational, and operational interests served by any procurement rule or rules that deviate from those in the Virginia Public Procurement Act.

(2005, cc. 933, 945.)

**§ 23-38.111. Information technology.**

Subject to the terms of the management agreement, covered institutions may be exempt from the provisions governing the Virginia Information Technologies Agency, Chapter 20.1 (§ [2.2-2005](#) et seq.) of Title 2.2., and the provisions governing the Information Technologies Investment Board, Article 20 of Chapter 24 (§ [2.2-2457](#) et seq.) of Title 2.2; provided, however, that the governing body of a covered institution shall adopt, and the covered institution shall comply with, policies for the procurement of information technology goods and services, including professional services, that are consistent with the requirements of § [23-38.110](#) and that include provisions addressing cooperative arrangements for such procurement as described in § [23-38.110](#), and shall adopt and comply with institutional policies and professional best practices regarding strategic planning for information technology, project management, security, budgeting, infrastructure, and ongoing operations.

(2005, cc. 933, 945.)

**§ 23-38.112. Acquisition, possession, operation, and disposition of property; acceptance of grants and loans.**

A. Nothing in this subsection shall limit or reduce the authority granted to a covered institution in §§ [23-38.109](#) and [23-38.113](#), which shall govern the planning, design, construction, and implementation of capital projects and leases by covered institutions. In order to continue its mission as a public institution of higher education:

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

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

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

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

2. After the effective date of the initial Management Agreement as provided in § [23-38.88](#), a covered institution may acquire any real property, construct improvements thereon in accordance with § [23-38.109](#), and acquire any personal property, tangible or intangible, and hold, possess, operate, and dispose of such real and personal property as follows:

a. If the property is real property, including land, buildings, and improvements to land or buildings, and it is acquired or constructed with funds appropriated by the General Assembly for that purpose or with proceeds from a general obligation bond issue under Article X, Section 9(a) or 9(b) of the Constitution of Virginia, the covered institution (i) shall hold, possess, and operate such property in accordance with the institution's enabling

legislation, with this subchapter, and with any policies adopted by the governing body of the institution pursuant thereto, and (ii) shall dispose of such property in accordance with general law applicable to state-owned property and with the covered institution's enabling legislation.

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

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

3. With the approval of the Governor or as otherwise provided by law, and consistent with the provisions of subdivisions 1 and 2 of this subsection, a covered institution may sell, assign, encumber, mortgage, demolish, or otherwise dispose of any project or any other property, real or personal, tangible or intangible, or any right, easement, estate, or interest therein, or any deed of trust or mortgage lien interest owned by it, under its control or custody or in its possession, and may release or relinquish any right, title, claim, lien, interest, easement, or demand however acquired, including any equity or right of redemption in property foreclosed by it; and

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

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

C. Notwithstanding the provisions of this chapter, no covered institution shall take action with regard to any property, real or personal, if such action would be deemed to be in violation of any requirement or covenant contained in any outstanding bonds, notes, or other evidences of indebtedness.

(2005, cc. 933, 945.)

#### **§ 23-38.113. Leases of property.**

The governing body of a covered institution shall adopt such policies relating to the leasing of real property, including capital or operating income leases, that reasonably ensure that such leases are efficiently procured on appropriate terms and for appropriate purposes. With respect to capital or operating income leases for real property to be used for academic purposes, or for real property owned by the institution or a foundation related to the institution to be used for non-academic purposes in accordance with the institution's land use plan pursuant to § [2.2-1153](#), other than applicable policies adopted by a covered institution's board of visitors and provisions of general law that expressly apply to covered institutions, such institutions shall be exempt from any state or local statutes or ordinances, rules, regulations, and guidelines relating to operating income leases of real property by public entities and, except as otherwise provided in §§ [23-38.109](#) and [23-38.112](#), to capital leases.

(2005, cc. 933, 945.)

**§ 23-38.114. General; definition.**

A. Covered Employees are state employees of a covered institution of the Commonwealth of Virginia. Notwithstanding subsections B and C of this section, the state retirement system, state health insurance program, state workers' compensation coverage program, and state grievance procedure, as they may be amended from time to time, shall continue to apply to and govern all eligible Covered Employees. If, however, a covered institution has been or is permitted by law other than in this chapter to establish an alternative health insurance plan or an alternative faculty or University of Virginia Medical Center retirement plan or plans, such alternative health insurance or faculty or University of Virginia Medical Center retirement plan or plans shall apply to and govern the Covered Employees included in such plan or plans. Each Covered Employee shall continue to be governed by and be eligible to participate in the human resources and benefits programs which governed him and in which he was eligible to participate immediately prior to the effective date of the initial Management Agreement for the covered institution by which he is employed unless and until a human resources program or programs, plan, or procedure applicable to him is established by that covered institution pursuant to §§ [23-38.116](#), [23-38.118](#), [23-38.119](#) and [23-38.120](#).

B. Even if a covered institution establishes a human resources program or programs, plan, or procedure pursuant to §§ [23-38.116](#), [23-38.118](#), [23-38.119](#) and [23-38.120](#), a salaried nonfaculty Covered Employee who was in the employment of that covered institution as of the day prior to the effective date of the initial Management Agreement, except employees of the University of Virginia Medical Center, may elect pursuant to § [23-38.115](#) to continue to participate in and be governed by the state human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 and administered by the Department of Human Resources Management. In such case, in addition to the state human resources plans, programs, policies and procedures set forth in subsection A, all other state human resources and benefit plans, programs, policies and procedures that apply to and govern state employees shall continue to apply to and govern such salaried nonfaculty Covered Employees.

C. Any human resources program or programs, plans, policies or procedures established by the governing body of a covered institution pursuant to §§ [23-38.116](#), [23-38.118](#), [23-38.119](#), and [23-38.120](#) shall apply to and govern (i) all salaried nonfaculty Covered Employees of that covered institution who were in its employment as of the day prior to the effective date of the initial Management Agreement and who elect pursuant to § [23-38.115](#) to participate in and be governed by such program or programs, plans, policies, and procedures, (ii) all salaried nonfaculty Covered Employees of that covered institution who are employed by that institution on or after the effective date of the initial Management Agreement, (iii) all non-salaried nonfaculty Covered Employees of that covered institution without regard to when they were hired, (iv) all faculty Covered Employees of that covered institution without regard to when they were hired, and (v) all employees of the University of Virginia Medical Center without regard to when they were hired. For purposes of this article, "participating Covered Employee" means a Covered Employee described in subdivisions (i) through (v) of this subsection.

D. All covered institutions shall be responsible for human resource reporting requirements established by the Governor or General Assembly.

(2005, cc. 933, 945.)

**§ 23-38.115. Election by certain Covered Employees.**

A. If the governing body of a covered institution establishes a human resources program or programs pursuant to § [23-38.116](#), a salaried nonfaculty Covered Employee of that covered institution who was in its employment as of the day prior to the effective date of the initial Management Agreement, except employees of the University of Virginia Medical Center, shall be permitted to elect to participate in and be governed by either (i) the state human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2, or (ii) the

human resources program or programs established by the governing body of that covered institution pursuant to § [23-38.116](#). A salaried nonfaculty Covered Employee who elects to participate in and be governed by the human resources program or programs established by the governing body of that covered institution pursuant to § [23-38.116](#) also, by that election, shall be deemed to have elected to be eligible to participate in and to be governed by the human resources plans, programs, policies and procedures that are or may be adopted by that covered institution for his classification of employees pursuant to §§ [23-38.118](#), [23-38.119](#), and [23-38.120](#).

B. If the governing body of a covered institution establishes a human resources program or programs pursuant to § [23-38.116](#), the covered institution shall provide each of its salaried nonfaculty Covered Employees who was in its employment as of the day prior to the effective date of the initial Management Agreement, except employees of the University of Virginia Medical Center, with a period of at least 90 days after the effective date of the institution's human resource program for his classification of employees to make the election required by subsection A. If such a salaried nonfaculty Covered Employee does not make an election by the end of that 90-day period, he shall be deemed not to have elected to participate in the human resources program or programs established by the covered institution pursuant to § [23-38.116](#). If such a salaried nonfaculty Covered Employee elects to participate in the human resources program or programs established by the covered institution pursuant to § [23-38.116](#), that election shall be irrevocable. At least every two years, a covered institution shall offer to salaried nonfaculty Covered Employees who have elected to continue to participate in the state human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2 an opportunity to elect to participate in the human resources program or programs established by the covered institution pursuant to § [23-38.116](#); provided that, each time prior to offering such opportunity to such salaried nonfaculty Covered Employees, and at least once every two years after the effective date of the human resources program or programs established pursuant to § [23-38.116](#), the covered institution shall make available to each of its salaried nonfaculty Covered Employees a comparison of its human resources program for that classification of salaried nonfaculty Covered Employee with the state human resources program for comparable state employees, including but not limited to a comparability assessment of compensation and benefits.

(2005, cc. 933, 945.)

**§ 23-38.116. Human resources programs.**

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

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

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

(2005, cc. 933, 945.)

**§ 23-38.117. Grievance procedures.**

A. No covered institution shall be exempt from the State Grievance Procedure (§ [2.2-3000](#) et seq.), which shall continue to apply to all eligible nonfaculty Covered Employees of a covered institution. The governing body of each covered institution shall adopt policies that encourage the resolution of employment-related problems and complaints of its nonfaculty Covered Employees. Such policies shall provide that nonfaculty Covered Employees of the institution shall be able to discuss their concerns with their immediate supervisors and management freely and without retaliation. To the extent that such concerns cannot be resolved informally, the State Grievance Procedure (§ [2.2-3000](#) et seq.) of Title 2.2 shall apply (i) to the covered institution's participating nonfaculty Covered Employees to the same extent that it applied to the same classifications of nonfaculty employees prior to the institution's effective date of the initial Management Agreement and (ii) to the covered institution's salaried nonfaculty Covered Employees who have elected pursuant to § [23-38.115](#) to continue to participate in the state human resources program set forth in Chapters 28 (§ [2.2-2800](#) et seq.) and 29 (§ [2.2-2900](#) et seq.) of Title 2.2.

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

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

(2005, cc. 933, 945.)

**§ 23-38.118. Miscellaneous personnel matters.**

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

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

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

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

(2005, cc. 933, 945.)

**§ 23-38.119. Certain insurance plans; legal process and assignment.**

A. Insurance provided under this article and all proceeds therefrom shall be subject to the same provisions regarding exemption from levy, garnishment and other legal process as is provided to Virginia Retirement System plans under § [51.1-510](#); provided, however, that permitted assignments shall be effected through completion of forms provided by the covered institution or its vendor, and provided further, that for insurance plans established by a covered institution, the authority granted to the Board of the Virginia Retirement System in § [51.1-510](#) is hereby granted to and shall be exercised by the covered institution.

B. Each covered institution (i) shall purchase or make available group life and accidental death and dismemberment insurance policies covering in whole or in part those of its participating Covered Employees eligible to participate in the Virginia Retirement System, and (ii) may purchase or make available such additional insurance policies covering its participating Covered Employees as it deems appropriate. Participating Covered Employees shall not be required to present evidence of insurability satisfactory to an insurance company for basic group life insurance coverage. All salaried participating Covered Employees shall be offered basic group life insurance at a level of coverage determined by such institution's governing body. A covered institution may require participating Covered Employees to pay all or a portion of the cost of the insurance coverage offered pursuant to this subsection, which may be collected through a payroll deduction program. If the institution's governing body so elects, and subject to the execution of such participation agreements as the Virginia Retirement System may require, the covered institution's participating Covered Employees may be covered by the Virginia Retirement System's group insurance programs established pursuant to Chapter 5 (§ [51.1-500](#) et seq.) of Title 51.1 under the same terms, costs, and conditions that apply to, and with the same benefits that are available to, other state employees.

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

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

(2005, cc. 933, 945.)

**§ 23-38.120. Severance policies.**

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

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

C. Covered Employees who were employees of a covered institution and were covered by the provisions of Chapter 29 (§ [2.2-2900](#) et seq.) of Title 2.2 prior to its effective date of the initial Management Agreement, who otherwise would be eligible for severance benefits under the Workforce Transition Act (§ [2.2-3200](#) et seq.), and who are separated by a covered institution because of a reduction in workforce shall have the same preferential hiring rights with state agencies and other executive branch institutions as other state employees have under § [2.2-3201](#). Conversely, a covered institution shall recognize the hiring preference conferred by § [2.2-3201](#) on state employees who were hired by a state agency or executive branch institution before the covered institution's effective date of the initial Management Agreement and who were separated after that date by that state agency or executive branch institution because of a reduction in workforce. If a covered institution has adopted a classification system pursuant to § [23-38.116](#) that differs from the classification system administered by the Department of Human Resources Management, the covered institution shall classify the separated employee according to its classification system and shall place the separated employee appropriately. Any such separated employee who is hired by a covered institution shall be a participating Covered Employee for purposes of this article. Classification decisions made under this subsection and applying to employees transferring between state agencies or other executive branch institutions and covered institutions, or between covered institutions, as a result of a reduction in force and with the preferential hiring rights provided in this subsection and in § [2.2-3201](#) shall be presumed appropriate, and a separated employee who grieves the classification decision shall bear the burden of demonstrating that the classification violates the separated employee's preferential hiring rights.

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

(2005, cc. 933, 945.)

**§ 23-38.121. Restructured authority subject to management agreement.**

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

(2005, cc. 933, 945.)