

EXECUTIVE SUMMARY

Introduction

Title 23 (Educational Institutions) contains provisions of the Code of Virginia that address (i) institutions of higher education in the Commonwealth and (ii) other educational and cultural institutions in the Commonwealth such as museums, medical schools and health system authorities, and educational authorities, centers, institutes, and partnerships.

Title 23 has not been revised since the adoption of the Code of Virginia of 1950, at which time the title consisted of 14 chapters. In the ensuing 65 Regular Sessions of the General Assembly, 57 chapters have been added and 20 repealed, resulting in the existing title, comprising 51 chapters. In the intervening years, sections have been added intermittently, often at the end of a chapter, and chapters have been added intermittently, often at the end of the title; such actions over time have compromised any previous organizational scheme. It has become appropriate to (i) organize the laws in a more logical manner, (ii) remove obsolete and duplicative provisions, and (iii) improve the structure and clarity of statutes pertaining to institutions of higher education and other educational and cultural institutions in the Commonwealth.

Organization of Proposed Title 23.1

The title is renamed from Educational Institutions to Public Institutions of Higher Education; Other Educational and Cultural Institutions to more accurately describe the title's scope. Proposed Title 23.1 consists of 32 chapters divided into five subtitles: Subtitle I (General Provisions); Subtitle II (Students and Campus); Subtitle III (Management and Financing); Subtitle IV (Public Institutions of Higher Education); and Subtitle V (Other Educational and Cultural Institutions).

Subtitle I, General Provisions, contains proposed Chapter 1 (Definitions and General Provisions), which consists of titlewide definitions and provisions of a general nature, proposed Chapter 2 (State Council of Higher Education for Virginia), which consists of provisions relating to the higher education coordinating council in the Commonwealth, and proposed Chapter 3 (The Virginia Higher Education Opportunity Act of 2011), which consists of provisions relating to goals and incentives for public institutions of higher education in areas such as investment, access, and economic opportunity.

Subtitle II, Students and Campus, contains proposed Chapters 4 through 9, which pertain to students, financial assistance, student health, campus safety, and academic policies. Proposed Chapter 4 (General Provisions) includes provisions relating to students generally. Proposed Chapter 5 (In-state and Reduced Rate Tuition Eligibility) includes the rules, presumptions, and exceptions relating to student eligibility for in-state tuition and reduced rate tuition at public institutions of higher education in the Commonwealth. Proposed Chapter 6 (Financial Assistance) includes various forms of student financial assistance such as scholarships, grants, and tuition waivers. Proposed Chapter 7 (Virginia College Savings Plan and ABLE Savings Trust Accounts) includes the powers and duties of and other provisions relating to the Virginia College Savings Plan and ABLE Savings Trust Accounts. Proposed Chapter 8 (Health and Campus Safety) includes provisions relating to student health and campus safety, including

campus police departments. Proposed Chapter 9 (Academic Policies) includes provisions relating to programs of instruction, course credit, articulation, transfer, and dual enrollment.

Subtitle III, Management and Financing, contains proposed Chapter 10 (Restructured Higher Education Financial and Administrative Operations Act), which consists of provisions by which public institutions of higher education in the Commonwealth may exercise three separate levels of financial and administrative authority, proposed Chapter 11 (Bonds and Other Obligations), which consists of provisions relating to the issuance of bonds and other obligations by public institutions of higher education and certain other entities in the Commonwealth, and proposed Chapter 12 (Virginia College Building Authority), which consists of the powers and duties of and other provisions relating to the Virginia College Building Authority, including the power to finance projects at certain nonprofit private institutions of higher education.

Subtitle IV, Public Institutions of Higher Education, contains proposed Chapter 13 (Governing Boards of Public Institutions of Higher Education), which consists of provisions relating to the governing board of each public institution of higher education in the Commonwealth, and Chapters 14 through 29, which consist of the powers and duties of and other provisions relating to (i) the individual institutions of higher education in the Commonwealth: Christopher Newport University, George Mason University, James Madison University, Longwood University, the University of Mary Washington, Norfolk State University, Old Dominion University, Radford University, the University of Virginia, Virginia Commonwealth University, Virginia Military Institute, Virginia Polytechnic Institute and State University, Virginia State University, The College of William and Mary in Virginia, and the Virginia Community College System and (ii) the Virginia Commonwealth University Health System Authority (not defined as a public institution of higher education for the purposes of Title 23.1 but included in this proposed subtitle because of its close relationship to Virginia Commonwealth University).

Subtitle V, Other Educational and Cultural Institutions, contains proposed Chapter 30 (Eastern Virginia Medical School), which consists of the powers and duties of and other provisions relating to Eastern Virginia Medical School that are consolidated from uncodified acts of the assembly and moved into the Code of Virginia; proposed Chapter 31 (Educational Authorities, Centers, Institutes, and Partnerships), which consists of the powers and duties of and other provisions relating to the A.L. Philpott Manufacturing Extension Partnership, the Institute for Advanced Learning and Research, the New College Institute, the Roanoke Higher Education Authority, the Southern Virginia Higher Education Center, and the Southwest Virginia Higher Education Center; and proposed Chapter 32 (Museums and Other Cultural Institutions), which consists of the powers and duties of and other provisions relating to the Frontier Culture Museum of Virginia, Gunston Hall, the Jamestown-Yorktown Foundation, the Science Museum of Virginia, the Virginia Museum of Fine Arts, and the Virginia Commission for the Arts and Virginia Arts Foundation.

Repealed Statutory Provisions

During the revision process, the Code Commission became aware of a number of existing provisions that are either unnecessary or obsolete; these are recommended for repeal and thus shown as stricken and not incorporated into the proposed title. Drafting notes in the body of this report describe the reasons for the recommended repeal of the following provisions:

- § 23-2
- § 23-30.23
- § 23-30.40
- § 23-36.2
- §§ 23-37.1 through 23-37.5
- § 23-38.2
- § 23-38.8
- § 23-38.11
- § 23-38.54
- § 23-38.121
- § 23-49.12
- Article 2 (§§ 23-49.22:1 through 23-49.22:4) of Chapter 5.2
- § 23-49.33
- § 23-50.16:1
- Chapter 7 (§§ 23-51, 23-52, and 23-53)
- § 23-62
- § 23-77
- § 23-91.23
- Article 10 (§ 23-91.23:1) of Chapter 9
- § 23-100
- § 23-131
- Article 2.1 (§§ 23-135.8 through 23-135.11) of Chapter 11
- Article 2.2 (§§ 23-135.12 through 23-135.16) of Chapter 11
- Article 2.3 (§§ 23-135.17 through 23-135.21) of Chapter 11
- Article 4 (§§ 23-142 through 23-146) of Chapter 11
- § 23-164.10
- § 23-165.10
- § 23-214.1
- Article 2 (§§ 23-220.2, 23-220.3, and 23-220.4) of Chapter 16
- § 23-222
- § 23-242
- § 23-246
- § 23-247
- Chapter 27 (§§ 23-300 through 23-303)

Repealed Acts of Assembly

During the revision process, the Code Commission became aware of four acts of Assembly that are obsolete: Chapter 306 of the Acts of Assembly of 1986, Chapter 319 of the Acts of Assembly of 2002, Chapter 148 of the Acts of Assembly of 2004, and Chapter 195 of the Acts of Assembly of 2007. These Acts of Assembly are recommended for repeal in conjunction with the repeal of Chapter 7 (§§ 23-51, 23-52, and 23-53), as noted *supra*, because all of the relevant and necessary provisions regarding the governance of the Miller School of Albemarle are included in school's Articles of Incorporation filed with the State Corporation Commission.

Other Affected Titles

The following provisions are relocated to proposed Title 23.1 from other titles of the Code of Virginia:

- Article 4 (§ 2.2-2508 et seq.) of Chapter 25 of Title 2.2 and Article 1 (§ 2.2-2700 et seq.) of Chapter 27 of Title 2.2, relocated as proposed Article 7 (§ 23.1-3222 et seq.) of Chapter 32 (Virginia Commission for the Arts and Virginia Arts Foundation).
- § 2.2-5004 (Financial and administrative management standards for public institutions of higher education), relocated as proposed § 23.1-1001.
- § 2.2-5005 (Incentive performance benefits to certain public institutions of higher education), relocated as proposed subsection C of § 23.1-1002.
- § 3.2-503 (Duties of Extension Division of Virginia Polytechnic Institute and State University), relocated as proposed subsections C, D, and E of § 23.1-2610.

The following provisions are relocated from existing Title 23 to other titles of the Code of Virginia:

- § 23-9.1 (Granting easements across lands of certain schools and institutions), relocated as proposed § 22.1-20.1.
- Chapter 26 (§ 23-299 et seq.) (Establishment of College Partnership Laboratory Schools), relocated as proposed Chapter 19.1 (§ 22.1-349.1 et seq.) of Title 22.1 (College Partnership Laboratory Schools).
- Chapter 22 (§ 23-277 et seq.) (Commonwealth Health Research Fund) and Chapter 22.1 (§ 23-286.1) (Christopher Reeve Stem Cell Research Fund), relocated as proposed Chapter 5.3 (§ 32.1-162.23 et seq.) of Title 32.1 (Commonwealth Health Research Board and Fund; Christopher Reeve Stem Cell Research Fund).

The relocation of sections, articles, and chapters from other titles of the Code of Virginia to proposed Title 23.1 and from existing Title 23 to other titles of the Code of Virginia is not intended to have any substantive effect on their interpretation.

An outline of the organization of proposed Title 23.1 is included as Appendix A.

Technical Changes Made Throughout Title 23.1

An explanation of the significant changes made in each chapter is provided in a drafting note that precedes each chapter. Each section is followed by a drafting note describing any changes made in the section. If a section drafting note states "no change," the section contains no changes other than renumbering the section and updating any cross-references contained in the section. If a section drafting note states "technical changes," the section contains nonsubstantive changes to the text. These technical changes may range from the insertion of clarifying punctuation to a thorough modernization of archaic writing style. When a section contains structural or substantive changes, such as the deletion or addition of language, the section drafting note describes the reason for the proposed change.

Many of the technical changes arose from the Code Commission's determination that terminology should be clear, consistent, and modern. The following lists provide a representative

sample of the most significant and most widely implemented technical changes made in the proposed title.

The following technical changes are made in order to maintain consistency with changes made in previous title revisions, to update antiquated language, to provide clarity, and to bring Title 23.1 into accordance with Title 1 rules of construction for the Code:

- § 1-218. Includes. "Includes" means includes, but not limited to.
- § 1-221. Locality. "Locality" means a county, city, or town as the context may require.
- § 1-224. Municipality; incorporated communities; municipal corporation. "Municipality," "incorporated communities," "municipal corporation," and words or terms of similar import mean cities and towns.
- § 1-225. Nonlegislative citizen member. "Nonlegislative citizen member" means any natural person who is not a member of the General Assembly of Virginia.

Any reference to a "citizen member" or "nonlegislative member" is changed to the full term "nonlegislative citizen member."

- § 1-227. Number. A word used in the singular includes the plural and a word used in the plural includes the singular.
- § 1-230. Person. "Person" includes any individual, corporation, partnership, association, cooperative, limited liability company, trust, joint venture, government, political subdivision, or any other legal or commercial entity and any successor, representative, agent, agency, or instrumentality thereof.
- § 1-244. Short title citations. Whenever a subtitle, chapter, or article does not have a section or provision establishing or authorizing a short title citation for such subtitle, chapter or article, such subtitle, chapter or article may be cited by its caption. The caption is that word or group of words appearing directly below the numerical designation given the subtitle, chapter or article. Captions are intended as mere catchwords to indicate the contents of the subtitles, chapters, and articles and do not constitute part of the act of the General Assembly.

The following technical changes are made to remove and update antiquated terminology or clarify terms with general application, in accordance with Code Commission policies:

- "From time to time": This usually unnecessary reference is removed unless removal would mean the action could only be taken once.
- "As the case may be": This reference is removed when used with an option of two or more entities if it is clear when each option should be taken.
- Unclear references to "herein," "hereunder," and "thereunder" are replaced by appropriate references to a section, article, chapter, or title.
- Phrases such as "heretofore or hereafter" are removed as unnecessary because they mean "before now or after now."
- "Per centum" and "per annum" are replaced by "percent" and "per year," respectively.

- When grammatically feasible, "will" or "must" is changed to "shall" or other appropriate term.
- When grammatically feasible, "shall be guilty" is changed to "is guilty."
- "This Commonwealth" is replaced by "the Commonwealth."
- "Virginia" is replaced by "the Commonwealth."
- "Adopt regulations" is used rather than "promulgate regulations." The term "adopt regulations" means the process by which regulations are put into effect and includes the promulgation, revision or amendment, and formal acceptance of a regulation by an agency that has exercised its regulation-making authority in accordance with law. In its revision of Titles 2.1, 9, 63.1, 37.1, 3.1, 6.1, 64.1, and 33.1, the Code Commission approved the use of the more widely used "adopt" instead of "promulgate."
- The term "rule" is deleted when used in conjunction with "regulation" because it has the same meaning.
- Definitions are moved to the beginning of the applicable section, article, chapter, etc., to improve clarity and provide context.
- "And/or": This grammatical shortcut, which often leads to confusion or ambiguity, is amended throughout to reflect the appropriate meaning: "and" in the sense of all, inclusive; "or" in the sense of "either/any or both/all."

The following technical changes are made or not made, as the case may be, throughout proposed Title 23.1 and apply more specifically to the subject matter found in this title:

- In the case of annual reports, standard language is included to specify that each such report "shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports and shall be posted on the General Assembly's website."
- "Appropriation act" is changed to "general appropriation act."
- "Approval in writing first obtained" is changed to "prior written approval."
- Variations are stricken in favor of "the Armed Forces of the United States."
- "As well as" is changed to "and."
- "Branches of learning" is changed to "courses of study" or "programs of instruction," as the context requires.
- To the extent feasible, several sets of clauses within paragraphs are labelled for the sake of clarity.
- "Course work" is changed to "coursework."
- "Governing body" is changed to "governing board" or "board of visitors," as the context requires. The term "local governing body" is retained as appropriate for localities.
- "Hereby" is stricken as unnecessary.

- "In-state students" and similar variants of this term are stricken in favor of the standardized term "Virginia students."
- "In pursuance of" is changed to "pursuant to" or "for the purpose of," as the context requires.
- "Is authorized to" and similar variants of this term are changed to "may."
- "Out-of-state students" and similar variants of this term are stricken in favor of the standardized term "non-Virginia students."
- To the extent feasible, phrases in the passive voice are changed to the active voice.
- "Related to" is changed to "relating to."
- To the extent feasible, "shall be" is stricken in favor of "is."
- "State institution of higher learning" and similar variants of this term are stricken in favor of the standardized term "public institution of higher education."
- Unclear references to "therefor," "thereof," and "thereon" are replaced with more specific references.
- To the extent feasible, variations are stricken in favor of the standardized term "tuition, mandatory fees, and other necessary charges."
- § 1-222 states that "[w]henver authority is conferred by law to three or more persons, a majority of such persons shall have the power to exercise such authority, unless otherwise provided." Except as otherwise provided *infra*, several articles and chapters throughout existing Title 23 are silent with regard to quorum for the operation of several boards and remain silent with regard to quorum in proposed Title 23.1 in light of the generally applicable § 1-222.
- "Within or without the Commonwealth" is changed to "within or outside the Commonwealth."

Substantive Changes Proposed in Title 23.1

When the Code Commission has approved a substantive change to a provision of existing law, it is noted in the drafting note for the affected section. These substantive changes include the following:

- The provision in existing § 23-4 that any chief executive officer failing to keep a record of an institution's property for inspection by its governing board and the public is required to forfeit \$50 is recommended for repeal as obsolete because such provision is no longer enforced.
- Existing § 23-2.4 is incorporated into proposed § 23.1-204, which expires on June 30, 2017. As such, the requirement in existing § 23-2.4 for institutions of higher education to provide a link to postsecondary education and employment data will also expire on June 30, 2017.

- A substantive change is made in proposed subsection C of § 23.1-210 to reduce the meeting frequency of the Private College Advisory Board from twice annually to once annually to reflect the current practice of this board.
- "Or" is stricken in favor of "and" in the definition of "institution of higher education" in proposed § 23.1-213. Without such change, "institution of higher education" would include "academic-vocational non-college degree schools" in conflict with the meaning and use of each such term.
- The first sentence of subsection B of existing § 23-38.53:6 is recommended for repeal as obsolete because actual awards under the Virginia Guaranteed Assistance Program are not determined by the State Council of Higher Education for Virginia annually but are rather based on student need and vary by institution.
- A substantive change is made in proposed subsections A and B of § 23.1-1301 to permit the governing board of each public institution of higher education to delegate specific authority to a designee to reflect the current practice of such boards.
- Existing § 23-49.33 and subsections F and G of existing § 23-49.1 are recommended for repeal as obsolete because the purposes of the original 1976 Act of Assembly that established requirements for shared faculty, library use, and laboratory and other facility use between Christopher Newport University and The College of William and Mary in Virginia have been accomplished by the respective boards of visitors.
- The provisions in existing subsection (a) of § 23-91.26 relating to nonresident members of the board of visitors of George Mason University and in existing subsection (b) of § 23-91.26 relating to members of such board from Planning District Eight and Fauquier County are recommended for repeal as obsolete because such provisions are not enforced and are inconsistent with current practice.
- The annual deadlines for alumni association nominations of members of boards of visitors of various baccalaureate public institutions of higher education are recommended for repeal as obsolete because such provisions are not enforced and are inconsistent with current practice.
- The provisions of existing § 23-103 relating to the board of visitors of Virginia Military Institute communicating to the Governor the removal of professors for good cause are recommended for repeal as obsolete because such provisions are inconsistent with the current board practice and such procedure is not required of other public institutions of higher education.
- Home economics, an obsolete branch of learning at Virginia State University set forth in existing § 23-165.9, is recommended for repeal.
- A substantive change is made in proposed subsection A of § 23.1-2619 to remove specific qualifications of members of the board of directors (advisory board) of the Hampton Roads and Eastern Shore Agricultural Research and Extension Centers in favor of more general qualifications. This substantive change reflects the current appointment method for this advisory board.

- A substantive change is made in proposed subsection D of § 23.1-3102 to establish a quorum for the meetings of the board of trustees of the A.L. Philpott Manufacturing Extension Partnership at eight members, which is fewer than a majority. The Code is currently silent on the quorum required for meetings of this organization.
- A substantive change is made in proposed § 23.1-3121 to reduce the number of members of the Southern Virginia Higher Education Foundation on the board of the Southern Virginia Higher Education Center from three to two and increase the representatives of business and industry on the board from three to four. Section 2.2-3701 of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.) defines "meeting" to include an informal assemblage of as many as three members. If the three current members of the board of the Center were to discuss board business while assembled at a Southern Virginia Higher Education Foundation meeting, such discussion could violate the open meeting provisions of § 2.2-3707.
- A substantive change is made in proposed § 23.1-3125 to broaden the duties of the Southwest Virginia Higher Education Center to include encouraging the expansion of higher education degrees, adult and continuing education, workforce training, and professional development through partnerships with public and private institutions of higher education in order to better align the Center's duties with its current mission and practices.
- A substantive change is made in proposed § 23.1-3126 to add the president of Virginia Commonwealth University as an ex officio member of the board of trustees of the Southwest Virginia Higher Education Center. The board lost one ex officio member due to the closure of Virginia Intermont College in 2014.
- Substantive changes are made in proposed § 23.1-3127 to give the board of trustees of the Southwest Virginia Higher Education Center the authority to establish and administer agreements with (i) public and private institutions of higher education in the Commonwealth to provide undergraduate-level and graduate-level instructional programs at the Center and (ii) Virginia Highlands Community College and other public and private institutions of higher education to provide freshman-level and sophomore-level courses and associate degrees. Under existing law, the Center is only permitted to establish and administer agreements with (a) public institutions of higher education in the Commonwealth to provide graduate-level instructional programs at the Center and (b) Virginia Highlands Community College to provide associate degree instructional programs at the Center. This substantive change is intended to align the Center's powers with its current mission and practices.
- A substantive change is made in proposed § 23.1-3128 to specify that additional staff support for the functions of the Southwest Virginia Higher Education Center may be provided upon agreement by any public institution of higher education that offers courses or instructional programs at the Center. Under current law, such agreements are only permitted between the Center and Virginia Polytechnic Institute and State University, the University of Virginia, the University of Virginia's College at Wise, and Virginia Highlands Community College.

- A substantive change is made in proposed subsections A and D of § 23.1-3202 to (i) remove the restriction that members of the board of trustees of the Frontier Culture Museum of Virginia who are not residents of the Commonwealth shall serve at no expense to the Commonwealth and (ii) specify that all members are entitled to reimbursement for reasonable and necessary expenses, but only legislative members are entitled to be compensated at a per diem rate.
- A substantive change is made in proposed subsection C of § 23.1-3202 to specify that the board of trustees of the Frontier Culture Museum of Virginia may appoint an executive committee for the transaction of business in the recess of the board. Similar language is found in the enabling statutes of other boards in proposed Title 23.1. The existing statute is silent on the appointment and powers of the executive committee.
- A substantive change is made in proposed subdivision A 8 of § 23.1-3203 to remove the requirement that the Attorney General approve contracts entered into by the board of trustees of the Frontier Culture Museum of Virginia. The Attorney General does not exercise approval of such contracts.
- A substantive change is made in proposed subdivision 4 of § 23.1-3207 to remove the requirement that the Attorney General approve contracts entered into by the board of trustees of the Jamestown-Yorktown Foundation. The Attorney General does not exercise approval of such contracts.
- A provision in existing § 23-253.5 permitting members of the Virginia Museum of Fine Arts who made a contribution of \$1,000 or more prior to June 27, 1958, to dispose of their membership by last will and testament is recommended for repeal as obsolete per the recommendation of the Museum.
- A substantive change is made in proposed § 23.1-3219 to specify that the Art and Architectural Review Board is authorized to exercise powers conferred to it by law in relation to additions, repairs, and alterations to the exterior of the Virginia Museum of Fine Arts. Existing law does not distinguish between the interior and the exterior of the building.
- The first sentence of existing subsection E of § 23-278 is recommended for repeal as obsolete. Currently, members of the Commonwealth Health Research Board do not receive per diem compensation for their services but are reimbursed for reasonable and necessary expenses.