

2793

CHAPTER 13.

2794

GOVERNING BOARDS OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION.

2795

**Drafting note: Existing provisions that apply generally to governing boards of**

2796

**public institutions of higher education are consolidated in proposed Chapter 13.**

2797

~~§ 23-1.~~

2798

**Drafting note: Repealed by Acts 1984, c. 734.**

2799

~~§ 23-2. Penalty for failure to make report.~~

2800 ~~If the report required by § 23-1.01 is not made from any educational institution which~~  
2801 ~~receives any portion of the revenue of the Literary Fund, or to which any loan has been made~~  
2802 ~~out of the fund, the Comptroller shall withhold, until the report is made, the payment of such~~  
2803 ~~portion of the Literary Fund, or proceed to enforce payment of the loan.~~

2804 **Drafting note: § 23-2 is recommended for repeal as obsolete.**

2805 § ~~23-2.06~~ 23.1-1300. Members of governing boards; removal; terms.

2806 A. Members appointed by the Governor to the governing boards of public institutions of  
2807 higher education shall serve for terms of four years. Vacancies occurring other than by  
2808 expiration of a term shall be filled for the unexpired term. No member appointed by the  
2809 Governor to such a governing board shall serve for more than two consecutive four-year terms;  
2810 however, a member appointed by the Governor to serve an unexpired term shall be eligible to  
2811 serve two consecutive four-year terms immediately succeeding such unexpired term. Except as  
2812 otherwise provided in § 23.1-2601, all appointments shall be subject to confirmation by the  
2813 General Assembly. Members appointed by the Governor to the board shall continue to hold  
2814 office until their successors have been appointed and confirmed. Ex officio members shall serve  
2815 a term coincident with their term of office.

2816 B. No member appointed by the Governor to the governing board of a public institution  
2817 of higher education who has served two consecutive four-year terms on such board is eligible to  
2818 serve on the same board until at least four years have passed since the end of his second  
2819 consecutive four-year term.

2820 C. Notwithstanding the provisions of subsection E or any other provision of law, the  
2821 Governor may remove from office for malfeasance, misfeasance, incompetence, or gross  
2822 neglect of duty any member of the board of any public institution of higher education and fill  
2823 the vacancy resulting from the removal.

2824 D. The Governor shall set forth in a written public statement his reasons for removing  
2825 any member pursuant to subsection C at the time the removal occurs. The Governor shall be the  
2826 sole judge of the sufficiency of the cause for removal as set forth in subsection C.

2827 E. If any member of the governing board of a public institution of  
2828 higher education ~~or the State Board for Community Colleges~~ fails to attend (i) the meetings of  
2829 the board for one year without sufficient cause, as determined by a majority vote of the board, or  
2830 (ii) the educational programs required by ~~§ 23-9.14:1~~ 23.1-1304 in his first two years of  
2831 membership without sufficient cause, as determined by a majority vote of the board, the  
2832 remaining members of the board shall record such failure in the minutes at its next meeting and  
2833 notify the Governor, and the office of such member shall be vacated. ~~However, no member~~  
2834 ~~-serving as of January 1, 2015 shall be removed for failing to attend the educational programs~~  
2835 ~~required by § 23-9.14:1 if he attends such training by January 1, 2016.~~

2836 B.F. The governing board of each public institution of higher  
2837 education ~~and the State Board for Community Colleges~~ shall adopt in its bylaws policies (i) for  
2838 removing members pursuant to subsection ~~A~~ E and (ii) referencing the Governor's power to  
2839 remove members described in ~~§ 2.2-108~~ subsection C.

2840 C. ~~No person who has served two consecutive four-year terms on the board of visitors of~~  
2841 ~~a four-year public institution of higher education or the State Board for Community Colleges~~  
2842 ~~shall be eligible to serve on the same board until at least four years have passed since the end of~~  
2843 ~~his second consecutive four-year term.~~

2844 **Drafting note: Existing provisions relating to the terms and removal of members of**  
2845 **the board of visitors of each public institution of higher education or other educational**  
2846 **institution are incorporated into subsections A and B of this proposed section with**  
2847 **technical changes. Subsections C and D are moved from subsections A and C of § 2.2-108.**

2848 § 23.1-1301. Governing boards; powers.

2849 A. The board of visitors of each baccalaureate public institution of higher education or  
2850 its designee may:

2851 1. Make regulations and policies concerning the institution;

2852 2. Manage the funds of the institution and approve an annual budget;

2853 3. Appoint the president, or in the case of the Virginia Military Institute, the  
2854 superintendent, who shall be the chief executive officer of the institution;

2855 4. Appoint professors and fix their salaries; and

2856 5. Fix the rates charged to students for tuition, fees, and other necessary charges.

2857 B. The governing board of each public institution of higher education or its designee  
2858 may:

2859 ~~§ 23-4.1. Sale or lease of interest in real property granted by purchase, deed or gift;~~  
2860 ~~granting of easements.~~

2861 ~~The boards of visitors or trustees of all State educational institutions, with the approval~~  
2862 ~~of the Governor first obtained, are hereby authorized to lease or~~ 1. In addition to the powers set  
2863 forth in Chapter 10 (§ 23.1-1000 et seq.), lease or sell and convey whatever its interest ~~they may~~  
2864 have in any real property that it has been or may hereafter be ~~acquired by purchase, will, or deed~~  
2865 of gift, subject to the prior approval of the Governor and any terms and conditions of the will or  
2866 deed of gift, if applicable. ~~The proceeds from such leases, sales and conveyances shall be held,~~  
2867 used, and administered in the same manner as all other gifts and bequests ~~are held, used and~~  
2868 administered;

2869 ~~Nothing in this section shall be construed as authorizing or empowering the lease, or sale~~  
2870 ~~and conveyance of such real property contrary to the terms and conditions of the will or deed of~~  
2871 ~~gift.~~

2872 ~~Such boards of visitors or trustees are authorized to grant~~ 2. Grant easements for roads,  
2873 streets, sewers, waterlines, electric and other utility lines, or other purposes on any property ~~now~~  
2874 ~~owned or hereafter acquired by such boards of visitors or trustees, when, in the discretion of~~  
2875 ~~such visitors or trustees it is deemed proper to grant such easements.~~ by the institution;

2876 3. Adopt regulations or institution policies for parking and traffic on property owned,  
2877 leased, maintained, or controlled by the institution;

2878 4. Adopt regulations or institution policies for the employment and dismissal of  
2879 professors, teachers, instructors, and other employees;

2880 5. Adopt regulations or institution policies for the acceptance and assistance of students  
2881 in addition to the regulations or institution policies required pursuant to § 23.1-1303;

2882 6. Adopt regulations or institution policies for the conduct of students in attendance and  
2883 for the rescission or restriction of financial aid, suspension, and dismissal of students who fail or  
2884 refuse to abide by such regulations or policies;

2885 7. Establish programs, in cooperation with the Council and the Office of the Attorney  
2886 General, to promote (i) student compliance with state laws on the use of alcoholic beverages and  
2887 (ii) the awareness and prevention of sexual crimes committed upon students;

2888 8. Establish guidelines for the initiation or induction of students into any social fraternity  
2889 or sorority in accordance with the prohibition against hazing as defined in § 18.2-56;

2890 9. Assign any interest it possesses in intellectual property or in materials in which the  
2891 institution claims an interest, provided such assignment is in accordance with the terms of the  
2892 institution's intellectual property policies adopted pursuant to § 23.1-1303. The Governor's prior  
2893 written approval shall be required for transfers of such property (i) developed wholly or  
2894 predominately through the use of state general funds, exclusive of capital assets and (ii) (a)  
2895 developed by an employee of the institution acting within the scope of his assigned duties or (b)  
2896 for which such transfer is made to an entity other than (1) the Innovation and Entrepreneurship  
2897 Investment Authority, (2) an entity whose purpose is to manage intellectual properties on behalf  
2898 of nonprofit organizations, colleges, and universities, or (3) an entity whose purpose is to benefit  
2899 the respective institutions. The Governor may attach conditions to these transfers as he deems  
2900 necessary. In the event the Governor does not approve such transfer, the materials shall remain  
2901 the property of the respective institutions and may be used and developed in any manner  
2902 permitted by law;

2903 ~~§ 23-2.01. Boards of visitors; public access to information.~~

2904 ~~Notwithstanding § 2.2-4342 and the Virginia Freedom of Information Act (§ 2.2-3700 et~~  
2905 ~~seq.), the board of visitors of each public institution of higher education and the State Board for~~  
2906 ~~Community Colleges may conduct 1. Conduct closed meetings pursuant to §§ 2.2-3711 and 2.2-~~

2907 3712 and may conduct business as a "state public body" for purposes of subsection B of § 2.2-  
2908 3708; and

2909 11. Adopt a resolution to require the governing body of a locality that is contiguous to  
2910 the institution to enforce state statutes and local ordinances with respect to offenses occurring on  
2911 the property of the institution. Upon receipt of such resolution, the governing body of such  
2912 locality shall enforce statutes and local ordinances with respect to offenses occurring on the  
2913 property of the institution.

2914 **Drafting note: Provisions related to powers of governing boards are consolidated in**  
2915 **this proposed section. Subsection A is derived from provisions common to the majority of**  
2916 **baccalaureate public institutions of higher education in existing Title 23. Subdivisions B 1**  
2917 **and 2 incorporate the provisions of existing § 23-4.1. Subdivisions B 3 through 8 of**  
2918 **incorporate the provisions of subsection A of existing § 23-9.2:3. Subdivision B 9**  
2919 **incorporates the provisions of subsection A of existing § 23-4.4. Subdivision B 10**  
2920 **incorporates the provisions of existing § 23-2.01. Subdivision B 11 incorporates the first**  
2921 **sentence of subsection B of proposed § 23.1-1303. Technical changes are made.**

2922 § ~~23-9.2:3.1~~ 23.1-1302. ~~Authority to establish incentives for Governing boards;~~  
2923 ~~additional powers;~~ voluntary early retirement; ~~eligibility;~~ ~~contents of plans.~~

2924 A. The ~~board of visitors or other~~ governing body board of ~~any each~~ public institution of  
2925 higher education may establish a compensation plan designed to provide incentives for  
2926 voluntary early retirement of teaching and research staff employed in nonclassified, faculty  
2927 positions. Participation in such compensation plan shall be voluntary for eligible employees and  
2928 no employee shall be penalized in any way for not participating.

2929 B. In order to qualify for participation in such compensation plan, an eligible faculty  
2930 employee shall (i) be at least 60 years of age; (ii) have completed at least 10 years of full-time  
2931 service at the institution offering the plan; (iii) have been awarded tenure or have a contractual  
2932 right to continued employment; (iv) agree to withdraw from active membership in the Virginia

2933 Retirement System; and (v) comply with any additional criteria established by the governing  
2934 body board of the institution.

2935 C. Any compensation plan established pursuant to this section shall include the  
2936 institutional needs and objectives to be served, the kind of incentives to be offered, the sources  
2937 of available funding for implementation, and any additional qualifications required of eligible  
2938 faculty employees established by the governing ~~body of the institution~~ board. Any such  
2939 compensation plan shall explicitly reserve to the governing ~~body of the institution~~ board the  
2940 authority to modify, amend, or repeal the plan. However, no such amendment, modification, or  
2941 repeal shall be effective as to any individual who retires under the plan prior to the effective date  
2942 of the amendment, modification, or repeal.

2943 D. The cash payments offered under any such compensation plan shall not exceed 150  
2944 percent of the employee's base annual salary reflected in the Personnel Management  
2945 Information System at the time of election to participate. Any such payment shall be allocated  
2946 over at least two years. Such compensation may include payment of insurance benefits by the  
2947 institution until the participant reaches the age of 65. The total cost in any fiscal year for any  
2948 compensation plan established under this section shall not exceed one percent of the institution's  
2949 corresponding fiscal year state general fund appropriation for faculty salaries and associated  
2950 benefits.

2951 E. The Governor may establish, with the assistance of the ~~State Council of Higher~~  
2952 Education, uniform criteria for such compensation plans. Prior to the adoption, modification,  
2953 amendment, or repeal of any such compensation plan, the governing board shall obtain the  
2954 Governor's approval ~~shall be obtained by the governing body of the institution~~. The Governor  
2955 shall provide a copy of each approved plan to the Chairmen of the House Committee on  
2956 Appropriations and the Senate Committee on Finance. All compensation plans shall be reviewed  
2957 for legal sufficiency by the Office of the Attorney General prior to adoption, modification,  
2958 amendment, or repeal.

2959 F. The Administrative Process Act (§ 2.2-4000 et seq.) shall not apply to the  
2960 establishment of such compensation plans or any implementing regulations or criteria.

2961 **Drafting note: Technical changes.**

2962 ~~§ 23-9.2:3 23.1-1303. Power of governing body of educational institution to establish~~  
2963 ~~rules and regulations; offenses occurring on property of institution; state direct student financial~~  
2964 ~~assistance; release of educational records~~ Governing boards; duties.

2965 A. ~~In addition to the powers now enjoyed by it, the board of visitors or other governing~~  
2966 ~~body of every educational institution shall have the power:~~

2967 1. ~~To establish rules and regulations for the acceptance and assistance of students except~~  
2968 ~~that (i) individuals who have failed to meet the federal requirement to register for the selective~~  
2969 ~~service shall not be eligible to receive any state direct student assistance; (ii) the accreditation~~  
2970 ~~status of a Virginia public high school shall not be considered in making admissions~~  
2971 ~~determinations for students who have earned a diploma pursuant to the requirements established~~  
2972 ~~by the Board of Education; and (iii) the governing boards of the four year institutions shall~~  
2973 ~~establish policies providing for the admission of certain graduates of Virginia community~~  
2974 ~~colleges as set forth in § 23-9.2:3.02.~~

2975 2. ~~To establish rules and regulations for the conduct of students while attending such~~  
2976 ~~institution.~~

2977 3. ~~To establish programs, in cooperation with the State Council of Higher Education and~~  
2978 ~~the Office of the Attorney General, to promote compliance among students with the~~  
2979 ~~Commonwealth's laws relating to the use of alcoholic beverages.~~

2980 4. ~~To establish rules and regulations for the rescission or restriction of financial aid,~~  
2981 ~~within the discretionary authority provided to the institution by federal or state law and~~  
2982 ~~regulations, and the suspension and dismissal of students who fail or refuse to abide by such~~  
2983 ~~rules and regulations for the conduct of students.~~



2984 ~~5. To establish rules and regulations for the employment of professors, teachers,~~  
2985 ~~instructors and all other employees and provide for their dismissal for failure to abide by such~~  
2986 ~~rules and regulations.~~

2987 ~~6. To provide parking and traffic rules and regulations on property owned by such~~  
2988 ~~institution.~~

2989 ~~7. To establish guidelines for the initiation or induction into any social fraternity or~~  
2990 ~~sorority in accordance with § 18.2-56.~~

2991 ~~8. To establish programs, in cooperation with the State Council of Higher Education for~~  
2992 ~~Virginia and the Office of the Attorney General, to promote the awareness and prevention of~~  
2993 ~~sexual crimes committed upon students.~~

2994 For purposes of this section, "intellectual property" means (i) a potentially patentable  
2995 machine, article of manufacture, composition of matter, process, or improvement in any of  
2996 those; (ii) an issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is  
2997 copyrightable.

2998 ~~B. Upon receipt of an appropriate resolution of the board of visitors or other governing~~  
2999 ~~body of an educational institution, the governing body of a political subdivision which is~~  
3000 ~~contiguous to the institution shall enforce state statutes and local ordinances with respect to~~  
3001 ~~offenses occurring on the property of the institution. The governing bodies board of the each~~  
3002 ~~public institutions institution of higher education shall assist:~~

3003 ~~§ 23-2.02. Boards of visitors; bylaws.~~

3004 ~~The board of visitors of each public institution of higher education and the State Board~~  
3005 ~~for Community Colleges shall adopt bylaws for its own governance. This document shall be~~  
3006 ~~posted-1. Adopt and post conspicuously on the board's its website and shall include bylaws for~~  
3007 ~~its own governance, including provisions that:~~1. Establish~~ (i) establish the requirement of~~  
3008 ~~transparency, to the extent required by law, in all board actions;~~2. Describe~~ (ii) describe the~~  
3009 ~~board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as set~~  
3010 ~~forth in § ~~23-2:4~~ subdivision B 10 of § 23.1-1301, including the requirements that:~~a. The~~ (a) the~~

3011 board ~~shall~~ record minutes of each open meeting and post the minutes on the board's website, in  
3012 accordance with subsection I of § 2.2-3707 and § 2.2-3707.1; ~~b. Discussions, (b) discussions~~  
3013 and actions on any topic not specifically exempted by § 2.2-3711 shall be held in an open  
3014 meeting; ~~c. The, (c) the~~ board ~~shall give~~ gives public notice of all meetings, in accordance with  
3015 subsection C of § 2.2-3707; ~~and d. Any official (d) any~~ action taken in a closed meeting ~~shall~~ be  
3016 approved in an open meeting before it can have any force or effect, in accordance with  
3017 subsection B of § 2.2-3711; and ~~3. Require (iii) require~~ that the board notify and invite the  
3018 Attorney General's appointee or representative to all meetings of the board, executive  
3019 committee, and board committees;:

3020 2. Establish regulations or institution policies for the acceptance and assistance of  
3021 students that include provisions providing (i) that individuals who have knowingly and willfully  
3022 failed to meet the federal requirement to register for the selective service shall not be eligible to  
3023 receive any state direct student assistance, (ii) that the accreditation status of a public high  
3024 school in the Commonwealth shall not be considered in making admissions determinations for  
3025 students who have earned a diploma pursuant to the requirements established by the Board of  
3026 Education, and (iii) for the admission of certain graduates of comprehensive community  
3027 colleges as set forth in 23.1-907;

3028 3. Assist the ~~State Council of Higher Education~~ in enforcing the provisions related to  
3029 eligibility for financial aid;:

3030 ~~C. 4.~~ Notwithstanding any other provision of state law, ~~the board of visitors or other~~  
3031 ~~governing body of every public institution of higher education in Virginia shall~~ establish  
3032 policies and procedures requiring the notification of the parent of a dependent student when  
3033 such student receives mental health treatment at the institution's student health or counseling  
3034 center and such treatment becomes part of the student's educational record in accordance with  
3035 the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and  
3036 may be disclosed without prior consent as authorized by the federal Family Educational Rights  
3037 and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such

3038 notification shall only be required if it is determined that there exists a substantial likelihood  
3039 that, as a result of mental illness the student will, in the near future, (i) cause serious physical  
3040 harm to himself or others as evidenced by recent behavior or any other relevant information or  
3041 (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for  
3042 his basic human needs. However, notification may be withheld if any person licensed to  
3043 diagnose and treat mental, emotional, or behavioral disorders by a health regulatory board  
3044 within the Department of Health Professions who is treating the student has made a part of the  
3045 student's record a written statement that, in the exercise of his professional judgment, the  
3046 notification would be reasonably likely to cause substantial harm to the student or another  
3047 person. No public institution of higher education or employee of a public institution of higher  
3048 education making a disclosure pursuant to this subsection shall be civilly liable for any harm  
3049 resulting from such disclosure unless such disclosure constitutes gross negligence or willful  
3050 misconduct by the institution or its employees.;

3051 ~~D. The board of visitors or other governing body of every public institution of higher~~  
3052 ~~education in Virginia shall establish~~ 5. Establish policies and procedures requiring the release of  
3053 the educational record of a dependent student, as defined by 20 U.S.C. § 1232g, to a parent at  
3054 his request.;

3055 ~~E. In order to improve the quality of the Commonwealth's work force and educational~~  
3056 ~~programs, the governing bodies of the public institutions of higher education shall establish~~ 6.  
3057 Establish programs to seek to ensure that all graduates have the technology skills necessary to  
3058 compete in the ~~21st Century~~ twenty-first century and, ~~particularly,~~ that all students matriculating  
3059 in teacher-training programs receive instruction in the effective use of educational technology.;

3060 ~~§ 23-2.5. Student athlete discipline policies.~~

3061 ~~The board of visitors or other governing board of each public institution of higher~~  
3062 ~~education in the Commonwealth shall establish~~ 7. Establish policies for the discipline of  
3063 students who participate in varsity intercollegiate athletics. ~~Such policies shall include~~ including

3064 a provision requiring an annual report by the administration of the institution to the board of  
3065 visitors or other governing board regarding enforcement actions taken pursuant to such policies;

3066 ~~§ 23-2.03. Boards of visitors; annual meeting with the president of the institution.~~

3067 ~~A. 8.~~ In addition to all meetings prescribed in Chapters ~~5-14~~ (§ ~~23-39~~ 23.1-1400 et seq.)  
3068 through ~~16-29~~ (§ ~~23-214~~ 23.1-2900 et seq.), ~~the board of visitors of each public institution of~~

3069 ~~higher education and the State Board for Community Colleges shall~~ meet with the president of

3070 ~~that the~~ institution at least once annually, in a closed meeting pursuant to subdivision A 1 of §

3071 2.2-3711; and deliver an evaluation of the president's performance. ~~B.~~ Any change to the

3072 president's employment contract during any such meeting or any other meeting of the board

3073 shall be made only by a vote of the majority of the board's members;

3074 ~~§ 23-9.2:3.3. Human research.~~

3075 ~~Each board of visitors or other governing body of any public or private institution of~~

3076 ~~higher education in which~~ 9. If human research, as defined in § 32.1-162.16, is conducted ~~shall~~

3077 at the institution, promulgate regulations pursuant to the Administrative Process Act (§ 2.2-4000

3078 et seq.) to effectuate the provisions of Chapter 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for

3079 human research. ~~The~~ Such regulations shall require the human research committee to submit to

3080 the Governor, the General Assembly, and the president of the institution or his designee at least

3081 annually a report on the human research projects reviewed and approved by the committee and

3082 ~~shall~~ require the committee to report any significant deviations from approved proposals;

3083 ~~§ 23-1.01. Annual reports required of boards of visitors.~~

3084 ~~The board of visitors of each institution of higher education shall submit~~ 10. Submit the

3085 annual financial statements for the year ending the preceding June 30 and the accounts and

3086 status of any ongoing capital projects to the Auditor of Public Accounts for the audit of such

3087 statements pursuant to § 30-133;

3088 ~~§ 23-2.05. Boards of Visitors; annual executive summaries.~~

3089 ~~The board of visitors of each public institution of higher education and the State Board~~

3090 ~~for Community Colleges shall submit~~ 11. Submit to the General Assembly and the Governor an

3091 annual executive summary of its interim activity and work no later than the first day of each  
3092 regular session of the General Assembly. The executive summary shall be submitted as  
3093 provided in the procedures of the Division of Legislative Automated Systems for the processing  
3094 of legislative documents and reports and shall be posted on the General Assembly's website.;

3095 ~~§ 23-9.1:1. Reports of certain acts to State Police.~~

3096 ~~The board of visitors or the governing body of any public institution of higher education~~  
3097 ~~in Virginia shall make~~ 12. Make available to any interested party upon request a copy of ~~that the~~  
3098 portion of the most recent report of the Uniform Crime Reporting Section of the Department of  
3099 State Police entitled "Crime in Virginia" pertaining to ~~colleges and universities.~~ institutions of  
3100 higher education; and

3101 ~~§ 23-4.3. Adoption of intellectual property policies; employees to be bound by such~~  
3102 ~~policies.~~

3103 ~~A. The boards of visitors of state-supported institutions of higher education and the State~~  
3104 ~~Board for Community Colleges shall adopt~~ 13. Adopt policies or institution regulations  
3105 regarding the ownership, protection, assignment, and use of intellectual property.

3106 ~~B. All employees of state-supported institutions of higher education, including the~~  
3107 ~~Virginia Community College System, as a condition of employment, shall be bound by the~~  
3108 ~~intellectual property policies of the institution employing them.~~

3109 ~~C. Upon adoption, the boards of visitors of state-supported institutions of higher~~  
3110 ~~education, including the State Board for Community Colleges, shall provide a copy of their~~  
3111 ~~intellectual property policies to the Governor and the Joint Commission on Technology and~~  
3112 ~~Science.~~

3113 ~~D. For purposes of this section, "intellectual property" means (i) a potentially patentable~~  
3114 ~~machine, article of manufacture, composition of matter, process, or improvement in any of~~  
3115 ~~those; (ii) an issued patent; (iii) a legal right that inheres in a patent; or (iv) anything that is~~  
3116 ~~copyrightable and provide a copy of such policies to the Governor and the Joint Commission on~~

3117 [Technology and Science. All employees of public institutions of higher education shall be](#)  
3118 [bound by the intellectual property policies of the institution employing them.](#)

3119 **Drafting note: Existing duties of governing boards are consolidated in subsection B**  
3120 **of this proposed section as follows: subdivision 1, existing § 23-2.02; subdivision 2,**  
3121 **subdivision A 1 of existing § 23-9.2:3; subdivision 7, existing § 23-2.5 with the addition of a**  
3122 **reference to knowing and willful failure in accordance with the federal Military Selective**  
3123 **Service Act (50 U.S.C. § 451 et seq.); subdivision 8, existing § 23-2.03; subdivision 9, the**  
3124 **provisions of existing § 23-9.2:3.3 related to public institutions of higher education;**  
3125 **subdivision 10, existing § 23-1.01; subdivision 11, existing § 23-2.05; subdivision 12,**  
3126 **existing § 23-9.1:1; and subdivision 13, existing § 23-4.3. Technical changes are made.**  
3127 **Powers of governing boards located in existing subdivisions A 1 through 8 are moved to §**  
3128 **23.1-1301 as subdivisions C 3 through 8. The first sentence of subsection B of this proposed**  
3129 **section is moved to subdivision B 12 of proposed § 23.1-1301. The definition of**  
3130 **"intellectual property" provided in subsection A is taken from subsection D of existing §**  
3131 **23-4.3, with subsections A, B, and C moved to subdivision B 13 of this proposed section.**

3132 [§ 23-9.14:1 23.1-1304. Educational Governing boards; additional duties; educational](#)  
3133 [programs for governing boards.](#)

3134 A. From such funds as are appropriated for such purpose, the Council shall develop, in  
3135 consultation with public institutions of higher education and members of their governing boards,  
3136 and annually deliver educational programs for the governing boards of such institutions. New  
3137 members of such governing boards shall participate, at least once during their first two years of  
3138 membership, in the programs, which shall be designed to address the role, duties, and  
3139 responsibilities of the governing boards and may include in-service programs on current issues  
3140 in higher education. In developing such programs, the Council may consider similar educational  
3141 programs for institutional governing boards in other states.

3142 B. Educational programs for the governing boards of public institutions of higher  
3143 education shall include presentations related to:

- 3144 1. Board members' duty to the Commonwealth;
- 3145 2. Governing board committee structure and function;
- 3146 3. The duties of the executive committee set forth in § ~~23-2.04~~ 23.1-1306;
- 3147 4. Professional accounting and reporting standards;
- 3148 5. Methods for meeting the statutory, regulatory, and fiduciary obligations of the board;
- 3149 6. The requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.),
- 3150 developed and delivered in conjunction with the Freedom of Information Advisory Council;
- 3151 7. Institutional ethics and conflicts of interest;
- 3152 8. Creating and implementing ~~institution wide rules and~~ regulations and institution
- 3153 policies;
- 3154 9. Business operations, administration, budgeting, financing, financial reporting, and
- 3155 financial reserves, including a segment on endowment management;
- 3156 10. Fixing student tuition ~~and~~ fees, and other necessary charges;
- 3157 11. Overseeing planning, construction, maintenance, expansion, and renovation projects
- 3158 that impact the ~~University's~~ institution's consolidated infrastructure, physical facilities, and
- 3159 natural environment, including its lands, improvements, and capital equipment;
- 3160 12. Workforce planning, strategy, and investment;
- 3161 13. Institutional advancement, including philanthropic giving, fundraising initiatives,
- 3162 alumni programming, communications and media, government and public relations, and
- 3163 community affairs;
- 3164 14. Student welfare issues, including academic studies; curriculum; residence life;
- 3165 student governance and activities; and the general physical and psychological well-being of
- 3166 undergraduate and graduate students;
- 3167 15. Current national and state issues in higher education;
- 3168 16. Future national and state issues in higher education;

3169 17. Relations between the governing board ~~of visitors~~ and the ~~president~~ chief executive  
3170 officer of the institution, including perspectives from ~~presidents~~ chief executive officers of  
3171 public institutions of higher education ~~in the Commonwealth~~;

3172 18. Best practices for board governance, including perspectives from current board  
3173 members; and

3174 19. Any other topics that the Council, public institutions of higher education, and  
3175 members of their governing boards deem necessary or appropriate.

3176 C. The Council shall submit to the General Assembly and the Governor an annual  
3177 executive summary of the interim activity and work of the Council pursuant to this section no  
3178 later than the first day of each regular session of the General Assembly. The executive summary  
3179 shall be submitted as provided in the procedures of the Division of Legislative Automated  
3180 Systems for the processing of legislative documents and reports and shall be posted on the  
3181 General Assembly's website.

3182 **Drafting note: Technical changes.**

3183 § 23.1-1305. Governing boards; student accounts; collections.

3184 ~~F. The board of visitors or other No governing body of every public institution of higher~~  
3185 ~~education board~~ shall ~~not~~ refer a student account to collections for nonpayment before required  
3186 by the provisions of § 2.2-4806. This ~~subsection~~ section shall not apply to public institutions of  
3187 higher education that have entered into Management Agreements with the Commonwealth.

3188 **Drafting note: Subsection F of existing § 23-9.2:3 is moved into this proposed**  
3189 **section and technical changes are made.**

3190 ~~§ 23-2.04~~ 23.1-1306. Boards of visitors; Governing board executive committee; duties.

3191 The executive committee of ~~the each governing~~ board ~~of visitors of each public~~  
3192 ~~institution of higher education and the State Board for Community Colleges~~ shall (i) organize  
3193 the working processes of the board ~~and~~; (ii) recommend best practices for board governance.  
3194 ~~The committee shall: 1. Develop;~~ (iii) develop and recommend to the board a statement of  
3195 governance setting out the board's role; ~~2. Periodically~~ (iv) periodically review the board's



3196 bylaws and recommend amendments; ~~3. Provide~~ (v) provide advice to the board on committee  
3197 structure, appointments, and meetings; ~~4. Develop~~ (vi) develop an orientation and continuing  
3198 education process for visitors that includes training on the Virginia Freedom of Information Act  
3199 (§ 2.2-3700 et seq.); ~~5. Create~~ (vii) create, monitor, oversee, and review compliance with a code  
3200 of ethics for visitors; and ~~6. Develop~~ (viii) develop a set of qualifications and competencies for  
3201 membership on the board for approval by the board and recommendation to the Governor.

3202 **Drafting note: Technical changes.**

3203 § ~~23-3~~ 23.1-1307. ~~Expenses Governing boards; expenses of visitors~~ members.

3204 ~~The members of the board of visitors of each educational institution owned and~~  
3205 ~~controlled by the Commonwealth shall receive their actual expenses, when properly itemized,~~  
3206 ~~incurred in the discharge of their duties in attending the meetings of the board.~~ Members of the  
3207 the governing board of each public institution of higher education shall be reimbursed for all  
3208 reasonable and necessary expenses incurred in the performance of their duties. Funding for the  
3209 expenses of the members shall be provided by the institution.

3210 **Drafting note: The language in this proposed section related to expenses of**  
3211 **members of governing boards is updated.**

3212 § ~~23-4.3:1~~ 23.1-1308. ~~Policies addressing Governing board procedures;~~ textbook sales  
3213 and bookstores.

3214 A. No employee ~~at of a Virginia public college or university~~ institution of higher  
3215 education shall demand or receive any payment, loan, subscription, advance, deposit of money,  
3216 services, or anything, present or promised, as an inducement for requiring students to purchase a  
3217 specific textbook required for coursework or instruction; ~~with the exception that the.~~ However,  
3218 such employee may receive (i) sample copies, instructor's copies, or instructional material; not  
3219 to be sold; and (ii) royalties or other compensation from sales of textbooks that include such  
3220 instructor's own writing or work.

3221 B. ~~The Each~~ Each governing ~~boards~~ board shall implement procedures for making available to  
3222 students in a central location and in a standard format on the relevant institutional website

3223 listings of textbooks required or assigned for particular courses at the institution. The lists of  
3224 those required or assigned textbooks for each particular course shall include the International  
3225 Standard Book Number (ISBN) along with other relevant information.

3226 ~~Institutions~~ C. Public institutions of higher education maintaining a bookstore supported  
3227 by auxiliary services or operated by a private contractor shall post the listing of such textbooks  
3228 when the relevant instructor or academic department identifies the required textbooks for order  
3229 and subsequent student purchase.

3230 ~~C. The D. Each~~ governing ~~boards of public institutions of higher education~~ board shall  
3231 implement policies, procedures, and guidelines that encourage efforts to minimize the cost of  
3232 textbooks for students ~~at public colleges and universities~~ while maintaining the quality of  
3233 education and academic freedom. The guidelines shall ensure ~~the following that~~:

3234 1. ~~That faculty~~ Faculty textbook adoptions are made with sufficient lead time to  
3235 ~~university~~ university-managed or contract-managed bookstores so as to confirm availability of  
3236 the requested materials and, ~~where~~ when possible, ensure maximum availability of used  
3237 textbooks;

3238 2. ~~That in~~ In the textbook adoption process, the intent to use all items ordered,  
3239 particularly each individual item sold as part of a bundled package, is affirmatively confirmed  
3240 by the faculty member before the adoption is finalized. If the faculty member does not intend to  
3241 use each item in the bundled package, he shall notify the bookstore, and the bookstore shall  
3242 order the individualized items when their procurement is cost effective for both ~~institutions~~ the  
3243 institution and students and such items are made available by the publisher;

3244 3. ~~That faculty~~ Faculty members affirmatively acknowledge the bookstore's quoted retail  
3245 price of textbooks selected for use in each course;

3246 4. ~~That faculty~~ Faculty members are encouraged to limit their use of new edition  
3247 textbooks when previous editions do not significantly differ in a substantive way as determined  
3248 by the appropriate faculty member; and

3249 5. ~~That the establishment of policies shall include provisions for~~ Provisions address the  
3250 availability of required textbooks to students otherwise unable to afford the cost.

3251 ~~D. E.~~ No funds provided for financial aid from university bookstore revenue shall be  
3252 counted in the calculation for state appropriations for student financial aid.

3253 **Drafting note: Technical changes.**

3254 § ~~23-1.2~~ 23.1-1309. Interscholastic Boards of visitors; baccalaureate public institutions  
3255 of higher education; intercollegiate athletics programs.

3256 A. ~~For the purposes of~~ As used in this section:

3257 "Athletics revenue" means the total revenue received by an institution that is generated  
3258 by any of the institution's intercollegiate athletics programs. "Athletics revenue" includes  
3259 contributions; game guarantees; income received from endowments and investments; income  
3260 received from the sale of food, game programs, novelties, and other concessions at an  
3261 intercollegiate athletics contest; income received from intercollegiate athletics conferences for  
3262 participation in bowl games, tournaments, and other intercollegiate athletics contests; income  
3263 received from the provision of parking at intercollegiate athletics contests or other events  
3264 associated with intercollegiate athletics; rights and licensing; school funds; student fees; support  
3265 from third parties guaranteed by the institution, such as income received from athletics camps,  
3266 income received from television, and housing allowances; and all other income from any other  
3267 source generated by the institution's intercollegiate athletics programs.

3268 "Contributions" means any income received directly from individuals, corporations,  
3269 associations, foundations, clubs, or other donors for the operation of an institution's  
3270 intercollegiate athletics programs. "Contributions" includes amounts paid in excess of the face  
3271 value of an admissions ticket to an intercollegiate athletics contest or any other event associated  
3272 with intercollegiate athletics; cash; marketable securities; income generated from preferential  
3273 seating arrangements at intercollegiate athletics contests or other events associated with  
3274 intercollegiate athletics; and in-kind contributions such as cars provided to an intercollegiate

3275 athletics program by car dealers at no cost and apparel and sports drink products provided to  
3276 intercollegiate athletes and coaches at no cost.

3277 "Generated revenue" means all athletics revenue with the exception of the subsidy.

3278 "Institution" means a ~~four-year~~ baccalaureate public institution of higher education in the  
3279 Commonwealth.

3280 "Intercollegiate athletics program" means any athletics program for a particular sport  
3281 that is operated by an institution and governed by the National Collegiate Athletic Association  
3282 (NCAA).

3283 "Rights and licensing" includes income from radio and television broadcasts; Internet  
3284 and e-commerce rights resulting from institution-negotiated contracts; revenue-sharing  
3285 agreements with the NCAA or an intercollegiate athletics conference; licensing; the sale of  
3286 advertisements, trademarks, or royalties; corporate sponsorships; and the value of in-kind  
3287 contributions of products and services provided to an intercollegiate athletics program at no cost  
3288 as part of such corporate sponsorship, such as equipment, apparel, isotonic sports drinks, other  
3289 sports drink products, or water.

3290 "School funds" means the direct and indirect financial support provided by the institution  
3291 to any of its intercollegiate athletics programs. "School funds" includes state funds, tuition,  
3292 tuition waivers, federal work awards for student athletes, administrative costs, facilities and  
3293 grounds maintenance, security, risk management, utilities, and depreciation and debt services.

3294 "Student fees" means any fees assessed by an institution against a student that are used  
3295 to support any of the institution's intercollegiate athletics programs.

3296 "Subsidy" means the sum of school funds and student fees.

3297 "Subsidy percentage" means the subsidy divided by the athletics revenue, provided that  
3298 revenues allocated to (i) support spirit groups associated with any intercollegiate athletics  
3299 program, (ii) meet any indirect cost policy requirements, or (iii) debt service for previously  
3300 approved intercollegiate athletics capital outlay projects may be excluded from the subsidy for  
3301 the purposes of such calculation.

3302 "Ticket sales" means the sale of the right to gain admission to an intercollegiate athletics  
3303 contest or any other event associated with intercollegiate athletics. "Ticket sales" includes sums  
3304 received from any associated shipping and handling charges and includes sales to the public,  
3305 faculty, and students. "Ticket sales" does not include (i) amounts paid in excess of the face value  
3306 of an admissions ticket to an intercollegiate athletics contest or any other event associated with  
3307 intercollegiate athletics such as preferential seating arrangements or (ii) pass-through sales  
3308 transactions such as sales for admission tickets to bowl games and conference and national  
3309 tournaments.

3310 B. ~~No later than November 1, 2015, the~~ The Auditor of Public Accounts, in  
3311 collaboration with the ~~State Council of Higher Education for Virginia, the~~ State Comptroller, ~~the~~  
3312 Department of Planning and Budget, and each institution, shall develop and implement a  
3313 standardized reporting format for each institution to annually report its intercollegiate athletics  
3314 revenue and expenses to the Auditor of Public Accounts that shall include treatment of student  
3315 fees and classification of specific intercollegiate athletics programs and shall require expenses  
3316 for spirit groups, indirect cost policy requirements, and debt service for previously approved  
3317 intercollegiate athletics capital outlay projects and other intercollegiate athletics capital outlay  
3318 projects to be reported on separate lines.

3319 C. The subsidy percentage shall not exceed:

3320 1. 20 percent for NCAA Division I-A institutions affiliated with the Atlantic Coast  
3321 Conference, Big Ten Conference, Big 12 Conference, Pac-12 Conference, or Southeastern  
3322 Conference;

3323 2. 55 percent for NCAA Division I-A institutions affiliated with conferences other than  
3324 the Atlantic Coast Conference, Big Ten Conference, Big 12 Conference, Pac-12 Conference, or  
3325 Southeastern Conference;

3326 3. 70 percent for NCAA Division I-AA institutions;

3327 4. 78 percent for NCAA Division I-AAA institutions;

3328 5. 81 percent for NCAA Division II institutions that operate intercollegiate football  
3329 programs;

3330 6. 85 percent for NCAA Division II institutions that do not operate intercollegiate  
3331 football programs;

3332 7. 89 percent for NCAA Division III institutions that operate intercollegiate football  
3333 programs; and

3334 8. 92 percent for NCAA Division III institutions that do not operate intercollegiate  
3335 football programs.

3336 D. ~~Effective with the~~ Each fiscal year ~~beginning July 1, 2016~~, any percentage increase in  
3337 the subsidy at an institution that complies with subsection C shall be matched by a like  
3338 percentage increase in generated revenue, except that each such institution shall utilize a rolling  
3339 average of the change in generated revenue and student fees over the immediately preceding  
3340 five years for the purposes of such calculation.

3341 E. When necessary, each institution shall submit to the Governor and the General  
3342 Assembly for approval a plan that reduces the subsidy in accordance with targets outlined in the  
3343 plan over a five-year period until the subsidy percentage complies with the requirements of  
3344 subsection C.

3345 F. The Auditor of Public Accounts shall annually review each institution's progress  
3346 towards meeting the requirements of each plan approved pursuant to subsection E as part of his  
3347 annual audit pursuant to § 30-133.

3348 G. Failure to meet the progress requirements of each plan approved pursuant to  
3349 subsection E for one year, as determined by the Auditor of Public Accounts, shall result in such  
3350 reduction of the financial and administrative operations authority granted to the institution  
3351 pursuant to the Restructured Higher Education Financial and Administrative Operations Act (§  
3352 ~~23-38.88~~ 23.1-1000 et seq.) as the Governor or General Assembly determines.

3353 H. Failure to meet the progress requirements of each plan approved pursuant to  
3354 subsection E for two consecutive years, as determined by the Auditor of Public Accounts, shall

3355 result in revocation of all financial and administrative operations authority granted to the  
3356 institution pursuant to the Restructured Higher Education Financial and Administrative  
3357 Operations Act (§ ~~23-38.88~~ [23.1-1000](#) et seq.).

3358 I. The board of visitors of any institution that seeks to add a major intercollegiate  
3359 athletics program such as football or basketball or change the division level of any of its existing  
3360 intercollegiate athletics programs shall first submit to the Intercollegiate Athletics Review  
3361 Commission (Commission) established pursuant to Chapter 57 (§ 30-359 et seq.) of Title 30 a  
3362 plan and recommendations for financing the addition or change. The institution shall not in any  
3363 way undertake any such addition or agree or commit to any such change until it has received the  
3364 findings and recommendations of the Commission pursuant to § 30-360. Any such addition or  
3365 change shall be subject to the approval of the General Assembly expressed in the general  
3366 appropriation act. The board of visitors of any institution that adds a non-major intercollegiate  
3367 athletics program shall report such decision within 15 days of the board's action.

3368 **Drafting note: Obsolete references to November 1, 2015 and July 1, 2016 are**  
3369 **stricken. Technical changes are made, including use of "regulations" rather than "rules**  
3370 **and regulations" per recommendation of the Code Commission.**

3371 [§ 23.1-1310. Boards of visitors; baccalaureate public institutions of higher education;](#)  
3372 [property of predecessor institutions.](#)

3373 [All real estate and personal property standing in the name of any predecessor institution](#)  
3374 [of a baccalaureate public institution of higher education shall be transferred to, known and taken](#)  
3375 [as standing in the name of, and controlled by the board of visitors of such public institution of](#)  
3376 [higher education. All such real estate and personal property is the property of the](#)  
3377 [Commonwealth.](#)

3378 **Drafting note: This proposed section incorporates and standardized institution-**  
3379 **specific provisions related to the real estate and property of predecessor institutions.**

3380 #

3381