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SENATE BILL NO. 1065

Offered January 8, 2025

Prefiled January 7, 2025

A BILL to amend and reenact §§ 2.2-3711, 23.1-700, 23.1-701, 23.1-702, 23.1-704, and 23.1-705 of the Code of Virginia, relating to Commonwealth Savers Plan; Access Fund established; report.

Patron—Hashmi

Referred to Committee on Finance and Appropriations

Be it enacted by the General Assembly of Virginia:

1. That §§ 2.2-3711, 23.1-700, 23.1-701, 23.1-702, 23.1-704, and 23.1-705 of the Code of Virginia are amended and reenacted as follows:

§ 2.2-3711. (Effective July 1, 2024) Closed meetings authorized for certain limited purposes.

A. Public bodies may hold closed meetings only for the following purposes:

1. Discussion, consideration, or interviews of prospective candidates for employment; assignment, appointment, promotion, performance, demotion, salaries, disciplining, or resignation of specific public officers, appointees, or employees of any public body; and evaluation of performance of departments or schools of public institutions of higher education where such evaluation will necessarily involve discussion of the performance of specific individuals. Any teacher shall be permitted to be present during a closed meeting in which there is a discussion or consideration of a disciplinary matter that involves the teacher and some student and the student involved in the matter is present, provided that the teacher makes a written request to be present to the presiding officer of the appropriate board. Nothing in this subdivision, however, shall be construed to authorize a closed meeting by a local governing body or an elected school board to discuss compensation matters that affect the membership of such body or board collectively.

2. Discussion or consideration of admission or disciplinary matters or any other matters that would involve the disclosure of information contained in a scholastic record concerning any student of any public institution of higher education in the Commonwealth or any state school system. However, any such student, legal counsel and, if the student is a minor, the student's parents or legal guardians shall be permitted to be present during the taking of testimony or presentation of evidence at a closed meeting, if such student, parents, or guardians so request in writing and such request is submitted to the presiding officer of the appropriate board.

3. Discussion or consideration of the acquisition of real property for a public purpose, or of the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the public body.

4. The protection of the privacy of individuals in personal matters not related to public business.

5. Discussion concerning a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business' or industry's interest in locating or expanding its facilities in the community.

6. Discussion or consideration of the investment of public funds where competition or bargaining is involved, where, if made public initially, the financial interest of the governmental unit would be adversely affected.

7. Consultation with legal counsel and briefings by staff members or consultants pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the public body. For the purposes of this subdivision, "probable litigation" means litigation that has been specifically threatened or on which the public body or its legal counsel has a reasonable basis to believe will be commenced by or against a known party. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

8. Consultation with legal counsel employed or retained by a public body regarding specific legal matters requiring the provision of legal advice by such counsel. Nothing in this subdivision shall be construed to permit the closure of a meeting merely because an attorney representing the public body is in attendance or is consulted on a matter.

9. Discussion or consideration by governing boards of public institutions of higher education of matters relating to gifts, bequests and fund-raising activities, and of grants and contracts for services or work to be performed by such institution. However, the terms and conditions of any such gifts, bequests, grants, and contracts made by a foreign government, a foreign legal entity, or a foreign person and accepted by a public institution of higher education in the Commonwealth shall be subject to public disclosure upon written request to the appropriate board of visitors. For the purpose of this subdivision, (i) "foreign government"

means any government other than the United States government or the government of a state or a political subdivision thereof, (ii) "foreign legal entity" means any legal entity (a) created under the laws of the United States or of any state thereof if a majority of the ownership of the stock of such legal entity is owned by foreign governments or foreign persons or if a majority of the membership of any such entity is composed of foreign persons or foreign legal entities or (b) created under the laws of a foreign government, and (iii) "foreign person" means any individual who is not a citizen or national of the United States or a trust territory or protectorate thereof.

10. Discussion or consideration by the boards of trustees of the Virginia Museum of Fine Arts, the Virginia Museum of Natural History, the Jamestown-Yorktown Foundation, the Fort Monroe Authority, and The Science Museum of Virginia of matters relating to specific gifts, bequests, and grants from private sources.

11. Discussion or consideration of honorary degrees or special awards.

12. Discussion or consideration of tests, examinations, or other information used, administered, or prepared by a public body and subject to the exclusion in subdivision 4 of § 2.2-3705.1.

13. Discussion, consideration, or review by the appropriate House or Senate committees of possible disciplinary action against a member arising out of the possible inadequacy of the disclosure statement filed by the member, provided that the member may request in writing that the committee meeting not be conducted in a closed meeting.

14. Discussion of strategy with respect to the negotiation of a hazardous waste siting agreement or to consider the terms, conditions, and provisions of a hazardous waste siting agreement if the governing body in open meeting finds that an open meeting will have an adverse effect upon the negotiating position of the governing body or the establishment of the terms, conditions and provisions of the siting agreement, or both. All discussions with the applicant or its representatives may be conducted in a closed meeting.

15. Discussion by the Governor and any economic advisory board reviewing forecasts of economic activity and estimating general and nongeneral fund revenues.

16. Discussion or consideration of medical and mental health records subject to the exclusion in subdivision 1 of § 2.2-3705.5.

17. Deliberations of the Virginia Lottery Board in a licensing appeal action conducted pursuant to subsection D of § 58.1-4007 regarding the denial or revocation of a license of a lottery sales agent; and discussion, consideration or review of Virginia Lottery matters related to proprietary lottery game information and studies or investigations excluded from disclosure under subdivision 6 of § 2.2-3705.3 and subdivision 11 of § 2.2-3705.7.

18. Those portions of meetings in which the State Board of Local and Regional Jails discusses or discloses the identity of, or information tending to identify, any prisoner who (i) provides information about crimes or criminal activities, (ii) renders assistance in preventing the escape of another prisoner or in the apprehension of an escaped prisoner, or (iii) voluntarily or at the instance of a prison official renders other extraordinary services, the disclosure of which is likely to jeopardize the prisoner's life or safety.

19. Discussion of plans to protect public safety as it relates to terrorist activity or specific cybersecurity threats or vulnerabilities and briefings by staff members, legal counsel, or law-enforcement or emergency service officials concerning actions taken to respond to such matters or a related threat to public safety; discussion of information subject to the exclusion in subdivision 2 or 14 of § 2.2-3705.2, where discussion in an open meeting would jeopardize the safety of any person or the security of any facility, building, structure, information technology system, or software program; or discussion of reports or plans related to the security of any governmental facility, building or structure, or the safety of persons using such facility, building or structure.

20. Discussion by the Board of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of any local retirement system, acting pursuant to § 51.1-803, or by a local finance board or board of trustees of a trust established by one or more local public bodies to invest funds for postemployment benefits other than pensions, acting pursuant to Article 8 (§ 15.2-1544 et seq.) of Chapter 15 of Title 15.2, or by the board of visitors of the University of Virginia, acting pursuant to § 23.1-2210, or by the Board of the Commonwealth Savers Plan, acting pursuant to § 23.1-706, regarding the acquisition, holding or disposition of a security or other ownership interest in an entity, where such security or ownership interest is not traded on a governmentally regulated securities exchange, to the extent that such discussion (i) concerns confidential analyses prepared for the board of visitors of the University of Virginia, prepared by the retirement system, or a local finance board or board of trustees, or the Commonwealth Savers Plan or provided to the retirement system, a local finance board or board of trustees, or the Commonwealth Savers Plan under a promise of confidentiality, of the future value of such ownership interest or the future financial performance of the entity, and (ii) would have an adverse effect on the value of the investment to be acquired, held, or disposed of by the retirement system, a local finance board or board of trustees, the board of visitors of the University of Virginia, or the Commonwealth Savers Plan. Nothing in this subdivision shall be construed to prevent the disclosure of information relating to the identity of any investment held, the amount invested or the present

value of such investment.

21. Those portions of meetings in which individual child death cases are discussed by the State Child Fatality Review Team established pursuant to § 32.1-283.1, those portions of meetings in which individual child death cases are discussed by a regional or local child fatality review team established pursuant to § 32.1-283.2, those portions of meetings in which individual death cases are discussed by family violence fatality review teams established pursuant to § 32.1-283.3, those portions of meetings in which individual adult death cases are discussed by the state Adult Fatality Review Team established pursuant to § 32.1-283.5, those portions of meetings in which individual adult death cases are discussed by a local or regional adult fatality review team established pursuant to § 32.1-283.6, those portions of meetings in which individual death cases are discussed by overdose fatality review teams established pursuant to § 32.1-283.7, those portions of meetings in which individual maternal death cases are discussed by the Maternal Mortality Review Team pursuant to § 32.1-283.8, and those portions of meetings in which individual death cases of persons with developmental disabilities are discussed by the Developmental Disabilities Mortality Review Committee established pursuant to § 37.2-314.1.

22. Those portions of meetings of the board of visitors of the University of Virginia or Old Dominion University, as the case may be, and those portions of meetings of any persons to whom management responsibilities for the University of Virginia Medical Center or the Eastern Virginia Health Sciences Center at Old Dominion University, as the case may be, have been delegated, in which there is discussed proprietary, business-related information pertaining to the operations of the University of Virginia Medical Center or the Eastern Virginia Health Sciences Center at Old Dominion University, as the case may be, including business development or marketing strategies and activities with existing or future joint venturers, partners, or other parties with whom the University of Virginia Medical Center or the Eastern Virginia Health Sciences Center at Old Dominion University, as the case may be, has formed, or forms, any arrangement for the delivery of health care, if disclosure of such information would adversely affect the competitive position of the University of Virginia Medical Center or the Eastern Virginia Health Sciences Center at Old Dominion University, as the case may be.

23. Discussion or consideration by the Virginia Commonwealth University Health System Authority or the board of visitors of Virginia Commonwealth University of any of the following: the acquisition or disposition by the Authority of real property, equipment, or technology software or hardware and related goods or services, where disclosure would adversely affect the bargaining position or negotiating strategy of the Authority; matters relating to gifts or bequests to, and fund-raising activities of, the Authority; grants and contracts for services or work to be performed by the Authority; marketing or operational strategies plans of the Authority where disclosure of such strategies or plans would adversely affect the competitive position of the Authority; and members of the Authority's medical and teaching staffs and qualifications for appointments thereto.

24. Those portions of the meetings of the Health Practitioners' Monitoring Program Committee within the Department of Health Professions to the extent such discussions identify any practitioner who may be, or who actually is, impaired pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1.

25. Meetings or portions of meetings of the Board of the Commonwealth Savers Plan wherein personal information, as defined in § 2.2-3801, which has been provided to the Board or its employees by or on behalf of individuals who have requested information about, applied for, or entered into prepaid tuition contracts or savings trust account agreements pursuant to Chapter 7 (§ 23.1-700 et seq.) of Title 23.1 is discussed.

26. Discussion or consideration, by the former Wireless Carrier E-911 Cost Recovery Subcommittee created pursuant to former § 56-484.15, of trade secrets submitted by CMRS providers, as defined in § 56-484.12, related to the provision of wireless E-911 service.

27. Those portions of disciplinary proceedings by any regulatory board within the Department of Professional and Occupational Regulation, Department of Health Professions, or the Board of Accountancy conducted pursuant to § 2.2-4019 or 2.2-4020 during which the board deliberates to reach a decision or meetings of health regulatory boards or conference committees of such boards to consider settlement proposals in pending disciplinary actions or modifications to previously issued board orders as requested by either of the parties.

28. Discussion or consideration of information subject to the exclusion in subdivision 11 of § 2.2-3705.6 by a responsible public entity or an affected locality or public entity, as those terms are defined in § 33.2-1800, or any independent review panel appointed to review information and advise the responsible public entity concerning such records.

29. Discussion of the award of a public contract involving the expenditure of public funds, including interviews of bidders or offerors, and discussion of the terms or scope of such contract, where discussion in an open session would adversely affect the bargaining position or negotiating strategy of the public body.

30. Discussion or consideration of grant or loan application information subject to the exclusion in subdivision 17 of § 2.2-3705.6 by the Commonwealth Health Research Board.

31. Discussion or consideration by the Commitment Review Committee of information subject to the

exclusion in subdivision 5 of § 2.2-3705.2 relating to individuals subject to commitment as sexually violent predators under Chapter 9 (§ 37.2-900 et seq.) of Title 37.2.

32. Discussion or consideration of confidential proprietary information and trade secrets developed and held by a local public body providing certain telecommunication services or cable television services and subject to the exclusion in subdivision 18 of § 2.2-3705.6. However, the exemption provided by this subdivision shall not apply to any authority created pursuant to the BVU Authority Act (§ 15.2-7200 et seq.).

33. Discussion or consideration by a local authority created in accordance with the Virginia Wireless Service Authorities Act (§ 15.2-5431.1 et seq.) of confidential proprietary information and trade secrets subject to the exclusion in subdivision 19 of § 2.2-3705.6.

34. Discussion or consideration by the State Board of Elections or local electoral boards of voting security matters made confidential pursuant to § 24.2-410.2 or 24.2-625.1.

35. Discussion or consideration by the Forensic Science Board or the Scientific Advisory Committee created pursuant to Article 2 (§ 9.1-1109 et seq.) of Chapter 11 of Title 9.1 of criminal investigative files.

36. Discussion or consideration by the Brown v. Board of Education Scholarship Committee of information or confidential matters subject to the exclusion in subdivision A 3 of § 2.2-3705.4, and meetings of the Committee to deliberate concerning the annual maximum scholarship award, review and consider scholarship applications and requests for scholarship award renewal, and cancel, rescind, or recover scholarship awards.

37. Discussion or consideration by the Virginia Port Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.6 related to certain proprietary information gathered by or for the Virginia Port Authority.

38. Discussion or consideration by the Board of Trustees of the Virginia Retirement System acting pursuant to § 51.1-124.30, by the Investment Advisory Committee appointed pursuant to § 51.1-124.26, by any local retirement system, acting pursuant to § 51.1-803, by the Board of the Commonwealth Savers Plan acting pursuant to § 23.1-706, ~~or~~ by the Commonwealth Savers Plan's Investment Advisory Committee appointed pursuant to *subsection A of § 23.1-702, or by the Commonwealth Savers Plan's Access Advisory Committee appointed pursuant to subsection C of § 23.1-702* of information subject to the exclusion in subdivision 24 of § 2.2-3705.7.

39. Discussion or consideration of information subject to the exclusion in subdivision 3 of § 2.2-3705.6 related to economic development.

40. Discussion or consideration by the Board of Education of information relating to the denial, suspension, or revocation of teacher licenses subject to the exclusion in subdivision 11 of § 2.2-3705.3.

41. Those portions of meetings of the Virginia Military Advisory Council or any commission created by executive order for the purpose of studying and making recommendations regarding preventing closure or realignment of federal military and national security installations and facilities located in Virginia and relocation of such facilities to Virginia, or a local or regional military affairs organization appointed by a local governing body, during which there is discussion of information subject to the exclusion in subdivision 8 of § 2.2-3705.2.

42. Discussion or consideration by the Board of Trustees of the Veterans Services Foundation of information subject to the exclusion in subdivision 28 of § 2.2-3705.7 related to personally identifiable information of donors.

43. Discussion or consideration by the Virginia Tobacco Region Revitalization Commission of information subject to the exclusion in subdivision 23 of § 2.2-3705.6 related to certain information contained in grant applications.

44. Discussion or consideration by the board of directors of the Commercial Space Flight Authority of information subject to the exclusion in subdivision 24 of § 2.2-3705.6 related to rate structures or charges for the use of projects of, the sale of products of, or services rendered by the Authority and certain proprietary information of a private entity provided to the Authority.

45. Discussion or consideration of personal and proprietary information related to the resource management plan program and subject to the exclusion in (i) subdivision 25 of § 2.2-3705.6 or (ii) subsection E of § 10.1-104.7. This exclusion shall not apply to the discussion or consideration of records that contain information that has been certified for release by the person who is the subject of the information or transformed into a statistical or aggregate form that does not allow identification of the person who supplied, or is the subject of, the information.

46. Discussion or consideration by the Board of Directors of the Virginia Alcoholic Beverage Control Authority of information subject to the exclusion in subdivision 1 of § 2.2-3705.3 related to investigations of applicants for licenses and permits and of licensees and permittees.

47. Discussion or consideration of grant, loan, or investment application records subject to the exclusion in subdivision 28 of § 2.2-3705.6 for a grant, loan, or investment pursuant to Article 11 (§ 2.2-2351 et seq.) of Chapter 22.

48. Discussion or development of grant proposals by a regional council established pursuant to Article 26

(§ 2.2-2484 et seq.) of Chapter 24 to be submitted for consideration to the Virginia Growth and Opportunity Board.

49. Discussion or consideration of (i) individual sexual assault cases by a sexual assault response team established pursuant to § 15.2-1627.4, (ii) individual child abuse or neglect cases or sex offenses involving a child by a child sexual abuse response team established pursuant to § 15.2-1627.5, (iii) individual cases involving abuse, neglect, or exploitation of adults as defined in § 63.2-1603 pursuant to §§ 15.2-1627.5 and 63.2-1605, or (iv) individual human trafficking cases by any human trafficking response team established pursuant to § 15.2-1627.6.

50. Discussion or consideration by the Board of the Virginia Economic Development Partnership Authority, the Joint Legislative Audit and Review Commission, or any subcommittees thereof, of the portions of the strategic plan, marketing plan, or operational plan exempt from disclosure pursuant to subdivision 33 of § 2.2-3705.7.

51. Those portions of meetings of the subcommittee of the Board of the Virginia Economic Development Partnership Authority established pursuant to subsection F of § 2.2-2237.3 to review and discuss information received from the Virginia Employment Commission pursuant to subdivision C 2 of § 60.2-114 and the Department of Workforce Development and Advancement pursuant to subsection B of § 2.2-2040.

52. Discussion or consideration by the Commonwealth of Virginia Innovation Partnership Authority (the Authority), an advisory committee of the Authority, or any other entity designated by the Authority, of information subject to the exclusion in subdivision 35 of § 2.2-3705.7.

53. Deliberations of the Virginia Lottery Board conducted pursuant to § 58.1-4105 regarding the denial or revocation of a license of a casino gaming operator, or the refusal to issue, suspension of, or revocation of any license or permit related to casino gaming, and discussion, consideration, or review of matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

54. Deliberations of the Virginia Lottery Board in an appeal conducted pursuant to § 58.1-4007 regarding the denial of, revocation of, suspension of, or refusal to renew any license or permit related to sports betting and any discussion, consideration, or review of matters related to investigations excluded from mandatory disclosure under subdivision 1 of § 2.2-3705.3.

55. Meetings or portions of meetings of the Board of Criminal Justice Services or the Department of Criminal Justice Services concerning the decertification of an identifiable law-enforcement or jail officer.

B. No resolution, ordinance, rule, contract, regulation or motion adopted, passed or agreed to in a closed meeting shall become effective unless the public body, following the meeting, reconvenes in open meeting and takes a vote of the membership on such resolution, ordinance, rule, contract, regulation, or motion that shall have its substance reasonably identified in the open meeting.

C. Public officers improperly selected due to the failure of the public body to comply with the other provisions of this section shall be de facto officers and, as such, their official actions are valid until they obtain notice of the legal defect in their election.

D. Nothing in this section shall be construed to prevent the holding of conferences between two or more public bodies, or their representatives, but these conferences shall be subject to the same procedures for holding closed meetings as are applicable to any other public body.

E. This section shall not be construed to (i) require the disclosure of any contract between the Department of Health Professions and an impaired practitioner entered into pursuant to Chapter 25.1 (§ 54.1-2515 et seq.) of Title 54.1 or (ii) require the board of directors of any authority created pursuant to the Industrial Development and Revenue Bond Act (§ 15.2-4900 et seq.), or any public body empowered to issue industrial revenue bonds by general or special law, to identify a business or industry to which subdivision A 5 applies. However, such business or industry shall be identified as a matter of public record at least 30 days prior to the actual date of the board's authorization of the sale or issuance of such bonds.

§ 23.1-700. Definitions.

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

"ABLE savings trust account" means an account established pursuant to this chapter to assist individuals and families to save private funds to support individuals with disabilities to maintain health, independence, and quality of life, with such account used to apply distributions for qualified disability expenses for an eligible individual, as both such terms are defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"Access Fund" means that portion of the Fund, and any earnings thereon, allocated and managed by the board to support education accessibility, affordability, and attainability initiatives, specifically partnerships with elementary and secondary schools and access providers that serve elementary and secondary schools, pursuant to subdivisions 8 and 9 of § 23.1-704.

"Board" means the governing board of the Plan.

"College savings trust account" means an account established pursuant to this chapter to assist individuals and families to enhance the accessibility and affordability of higher education, with such account used to apply distributions from the account toward qualified higher education expenses, as that term is defined in §

529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law.

"Contributor" means a person who contributes money to a savings trust account established pursuant to this chapter on behalf of a qualified beneficiary and who is listed as the owner of the savings trust account.

"Fund" means the special nonreverting fund established pursuant to subsection C of § 23.1-701.

"Non-Virginia public and accredited nonprofit independent or private institutions of higher education" means public and accredited nonprofit independent or private institutions of higher education that are located outside the Commonwealth.

"Plan" means the Commonwealth Savers Plan.

"Prepaid tuition contract" means the contract or account entered into by the board and a purchaser pursuant to this chapter for the advance payment of tuition at a fixed, guaranteed level for a qualified beneficiary to attend any public institution of higher education to which the qualified beneficiary is admitted.

"Public institution of higher education" has the same meaning as provided in § 23.1-100.

"Purchaser" means a person who makes or is obligated to make advance payments in accordance with a prepaid tuition contract and who is listed as the owner of the prepaid tuition contract.

"Qualified beneficiary" or "beneficiary" means (i) a resident of the Commonwealth, as determined by the board, who is the beneficiary of a prepaid tuition contract and who may apply advance tuition payments to tuition as set forth in this chapter; (ii) a beneficiary of a prepaid tuition contract purchased by a resident of the Commonwealth, as determined by the board, who may apply advance tuition payments to tuition as set forth in this chapter; or (iii) a beneficiary of a savings trust account established pursuant to this chapter.

"Savings trust account" means an ABLE savings trust account or a college savings trust account.

"Savings trust agreement" means the agreement entered into by the board and a contributor that establishes a savings trust account.

"Tuition" means the quarter, semester, or term charges imposed for undergraduate tuition by any public institution of higher education and all mandatory fees required as a condition of enrollment of all students. At the discretion of the board, a beneficiary may apply benefits under a prepaid tuition contract and distributions from a college savings trust account (i) toward graduate-level tuition and (ii) toward qualified higher education expenses, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended.

§ 23.1-701. Plan established; moneys; governing board.

A. To enhance the accessibility and, affordability, and attainability of higher education for all citizens of the Commonwealth, and assist families and individuals to save for qualified disability expenses, the Commonwealth Savers Plan is established as a body politic and corporate and an independent agency of the Commonwealth.

B. Moneys of the Plan that are contributions to savings trust accounts made pursuant to this chapter, except as otherwise authorized or provided in this chapter, shall be deposited as soon as practicable in a separate account or separate accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or, to the extent permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. The savings program moneys in such accounts shall be paid out on checks, drafts payable on demand, electronic wire transfers, or other means authorized by officers or employees of the Plan.

C. All other moneys of the Plan, including payments received pursuant to prepaid tuition contracts, bequests, endowments, grants from the United States government or its agencies or instrumentalities, and any other available public or private sources of funds shall be first deposited in the state treasury in a special nonreverting fund (the Fund). Such moneys shall then be deposited as soon as practicable in a separate account or separate accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or, to the extent permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. Benefits relating to prepaid tuition contracts and Plan operating expenses shall be paid from the Fund. Any moneys remaining in the Fund at the end of a biennium shall not revert to the general fund but shall remain in the Fund. Interest and income earned from the investment of such funds shall remain in the Fund and be credited to it.

D. The Plan may maintain an independent disbursement system for the disbursement of prepaid tuition contract benefits and, in connection with such system, open and maintain a separate account or separate accounts in banks or trust companies organized under the laws of the Commonwealth, national banking associations, federal home loan banks, or, to the extent permitted by law, savings institutions organized under the laws of the Commonwealth or the United States. Such independent disbursement system and any related procedures shall be subject to review and approval by the State Comptroller. Nothing in this subsection shall be construed to relieve the Plan of its duty to provide prepaid tuition contract benefit transactions to the Commonwealth's system of general accounting maintained by the State Comptroller pursuant to § 2.2-802.

E. The Plan shall be administered by an 11-member board that consists of (i) the director of the Council or his designee, the Chancellor of the Virginia Community College System or his designee, the State Treasurer or his designee, and the State Comptroller or his designee, all of whom shall serve ex officio with voting

privileges, and (ii) seven nonlegislative citizen members, four of whom shall be appointed by the Governor, one of whom shall be appointed by the Senate Committee on Rules, two of whom shall be appointed by the Speaker of the House of Delegates, and all of whom shall have significant experience in finance, accounting, law, investment management, higher education, or disability advocacy. In addition, at least one of the nonlegislative citizen members shall have expertise in the management and administration of private defined contribution retirement plans.

F. Members appointed to the board shall serve terms of four years. Vacancies occurring other than by expiration of a term shall be filled for the unexpired term. No member appointed to the board shall serve more than two consecutive four-year terms; however, a member appointed to serve an unexpired term is eligible to serve two consecutive four-year terms immediately succeeding such unexpired term.

G. Ex officio members of the board shall serve terms coincident with their terms of office.

H. Members of the board shall receive no compensation but shall be reimbursed for actual expenses incurred in the performance of their duties.

I. The board shall elect from its membership a chairman and a vice-chairman annually.

J. A majority of the members of the board shall constitute a quorum.

§ 23.1-702. Advisory committees to the board; membership; terms; qualifications; duties.

A. To assist the board in fulfilling its fiduciary duty as trustee of the funds of the Plan and to assist the chief executive officer in directing, managing, and administering the Plan's assets, the board shall appoint an Investment Advisory Committee to provide sophisticated, objective, and prudent investment advice and direction.

1. Members of the Investment Advisory Committee shall demonstrate extensive experience in any one or more of the following areas: domestic or international equity or fixed-income securities, cash management, alternative investments, institutional real estate investments, or managed futures.

2. The Investment Advisory Committee shall (i) review, evaluate, and monitor investments and investment opportunities; (ii) make appropriate recommendations to the board about such investments and investment opportunities; (iii) make appropriate recommendations to the board about overall asset allocation; and (iv) perform such other duties as the board may delegate to the Investment Advisory Committee.

B. To assist the board in fulfilling its responsibilities relating to the integrity of the Plan's financial statements, financial reporting process, and systems of internal accounting and financial controls, the board shall appoint an Audit and Actuarial Committee.

1. Members of the Audit and Actuarial Committee shall demonstrate an understanding of generally accepted accounting principles, generally accepted auditing standards, enterprise risk management principles, and financial statements, and evidence an ability to assess the general application of such principles to the Plan's activities. The members should have experience in preparing, auditing, analyzing, or evaluating financial statements of the same complexity as those of the Plan, and an understanding of internal controls and procedures for financial reporting.

2. In order to establish and maintain its effectiveness and independence, the following individuals shall not be members of the Audit and Actuarial Committee: (i) current Plan employees; (ii) individuals who have been employees of the Plan in any of the prior three fiscal years; and (iii) immediate family members of an individual currently employed as an officer of the Plan or who has been employed in such a capacity within the past three fiscal years.

3. The Audit and Actuarial Committee shall (i) review, examine, and monitor the Plan's accounting and financial reporting processes and systems of internal controls; (ii) review and examine financial statements and financial disclosures and discuss any findings with the Plan's senior management; (iii) make appropriate recommendations and reports to the board; (iv) monitor the Plan's external audit function by (a) participating in the retention, review, and discharge of independent auditors; (b) discussing the Plan's financial statements and accounting policies with independent auditors; and (c) reviewing the independence of independent auditors; ~~and~~ (v) *assess and make recommendations to the board regarding the availability of Fund moneys for allocation to the Access Fund to support the programs and partnerships entered into pursuant to subdivisions 8 and 9 of § 23.1-704;* and (vi) perform such other duties as the board may delegate to the Audit and Actuarial Committee.

C. *To assist the board in fulfilling its responsibilities relating to enhancing the accessibility, affordability, and attainability of higher education for all citizens of the Commonwealth, the board shall appoint an Access Advisory Committee.*

1. *Members of the Access Advisory Committee shall demonstrate experience in education, mentoring or advising current or prospective students on matters relating to higher education, scholarship program administration, skilled and technical training programming, child and adolescent development, or meet such other criteria as is deemed relevant to education access and attainment.*

2. *The Access Advisory Committee shall include at least one representative of the Council and at least one representative of the System.*

3. *The Access Advisory Committee shall (i) make recommendations to the board relating to programs or*

partnerships that support the accessibility, affordability, and attainability of higher education for all citizens of the Commonwealth for which distributions from the Access Fund could be made pursuant to subdivisions 8 and 9 of § 23.1-704 and (ii) make Access Fund investment and allocation recommendations to the board.

D. The board may appoint such other advisory committees as it deems necessary and shall set the qualifications for members of any such advisory committee by resolution.

~~D.~~ E. Advisory committee members shall serve at the pleasure of the board and may be removed by a majority vote of the board.

~~E.~~ F. Members of advisory committees shall receive no compensation but shall be reimbursed for actual expenses incurred in the performance of their duties.

~~F.~~ G. The disclosure requirements of subsection B of § 2.2-3114 shall apply to each member of any advisory committee established pursuant to this section who is not also a board member.

~~G.~~ H. The recommendations of an advisory committee are not binding upon the board or the designee appointed by the board to make investment decisions pursuant to subsections A and B of § 23.1-706.

§ 23.1-704. Powers and duties of the board.

The board shall:

1. Administer the Plan established by this chapter;

2. Develop and implement programs for (i) the prepayment of undergraduate tuition, as defined in § 23.1-700, at a fixed, guaranteed level for application at a public institution of higher education; (ii) contributions to college savings trust accounts established pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified higher education expenses, as that term is defined in § 529 of the Internal Revenue Code of 1986, as amended, or other applicable federal law; and (iii) contributions to ABLE savings trust accounts established pursuant to this chapter on behalf of a qualified beneficiary in order to apply distributions from the account toward qualified disability expenses for an eligible individual, as both such terms are defined in § 529A of the Internal Revenue Code of 1986, as amended, or other applicable federal law;

3. Invest moneys in the Plan in any instruments, obligations, securities, or property deemed appropriate by the board;

4. Develop requirements, procedures, and guidelines regarding prepaid tuition contracts and savings trust accounts, including residency and other eligibility requirements; the number of participants in the Plan; the termination, withdrawal, or transfer of payments under a prepaid tuition contract or savings trust account; time limitations for the use of tuition benefits or savings trust account distributions; and payment schedules;

5. Enter into contractual agreements, including contracts for legal, actuarial, financial, and consulting services and contracts with other states to provide savings trust accounts for residents of contracting states;

6. Procure insurance as determined appropriate by the board (i) against any loss in connection with the Plan's property, assets, or activities and (ii) indemnifying board members from personal loss or accountability from liability arising from any action or inaction as a board member;

7. Make arrangements with public institutions of higher education to fulfill obligations under prepaid tuition contracts and apply college savings trust account distributions, including (i) payment from the Plan of the appropriate amount of tuition on behalf of a qualified beneficiary of a prepaid tuition contract to the institution to which the beneficiary is admitted and at which the beneficiary is enrolled and (ii) application of such benefits toward graduate-level tuition and toward qualified higher education expenses, as that term is defined in 26 U.S.C. § 529 or any other applicable section of the Internal Revenue Code of 1986, as amended, as determined by the board in its sole discretion;

8. Develop and implement scholarship or matching grant programs, or both, as the board may deem appropriate; and, in consultation with relevant stakeholders, including the Council and the System, establish or identify and fund programs and partnerships to further its goal of ~~making~~ improving the affordability, accessibility, and attainability of higher education ~~more affordable and accessible to~~ for all citizens of the Commonwealth. *The board's initiatives for promoting higher education access for all citizens of the Commonwealth shall prioritize assisting or supporting students in certain demographic groups that are either enrolled in or preparing to enter an institution of higher education in accordance with the following categories: (i) students who meet the eligibility requirements for a federal Pell Grant, (ii) first generation undergraduate students, and (iii) students who report a total household income that is not more than 400 percent of the federal poverty guidelines established by the U.S. Department of Health and Human Services. The board shall establish metrics and evaluation standards for such programs and partnerships and shall provide ongoing oversight of such programs and partnerships;*

9. Establish the Access Fund as a portion of the Fund and use distributions from the Access Fund to support any programs or partnerships established or identified pursuant to subdivision 8. The Access Fund shall, in accordance with the provisions of this chapter, be managed as a part of the Fund but be accounted for separately with the primary investment objective of achieving a rate of return in excess of the rate of inflation, as measured by the Consumer Price Index or other method of measuring the rate of inflation that the board determines is reliable and generally accepted, plus spending over the investment horizon to

preserve the purchasing power of Fund assets. To supply a predictable level of funds, a total return spending policy shall be adopted for the Access Fund providing for the distribution of four percent of the 36-month rolling average of the market value of the Access Fund portfolio as of December 31 of each year, provided, however, that no distribution shall violate the standard of care set forth in § 23.1-706 or jeopardize the soundness of the Fund or the Plan's ability to meet any of its current or long term obligations;

10. Submit to the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Finance and Appropriations, the Senate Committee on Education and Health, and the Joint Legislative Audit and Review Commission by December 1 of each year a report on the Plan's activities relating to the Access Fund for the preceding year;

11. Apply for, accept, and expend gifts, grants, or donations from public or private sources to enable it to carry out its objectives;

~~10.~~ 12. Adopt regulations and procedures and perform any act or function consistent with the purposes of this chapter; and

~~11.~~ 13. Reimburse, at its option, all or part of the cost of employing legal counsel and such other costs as are demonstrated to have been reasonably necessary for the defense of any board member, officer, or employee of the Plan upon the acquittal, dismissal of charges, nolle prosequi, or any other final disposition concluding the innocence of such member, officer, or employee who is brought before any regulatory body, summoned before any grand jury, investigated by any law-enforcement agency, arrested, indicted, or otherwise prosecuted on any criminal charge arising out of any act committed in the discharge of his official duties that alleges a violation of state or federal securities laws. The board shall provide for the payment of such legal fees and expenses out of funds appropriated or otherwise available to the board.

§ 23.1-705. Board actions not a debt of Commonwealth.

A. As used in this section, "current obligations of the Plan" means amounts required for the payment of contract benefits or other obligations of the Plan, the maintenance of the Plan, and operating expenses for the current biennium, *including distributions made pursuant to subdivision 9 of § 23.1-704.*

B. No act or undertaking of the board is a debt or a pledge of the full faith and credit of the Commonwealth or any political subdivision of the Commonwealth, and all such acts and undertakings are payable solely from the Plan.

C. Notwithstanding the provisions of subsection B, in order to ensure that the Plan is able to meet its current obligations, the Governor shall include in the budget bills submitted pursuant to § 2.2-1509 a sum sufficient appropriation for the purpose of ensuring that the Plan can meet the current obligations of the Plan. Any sums appropriated by the General Assembly for such purpose shall be deposited into the Fund. All amounts paid into the Fund pursuant to this subsection shall constitute and be accounted for as advances by the Commonwealth to the Plan and, subject to the rights of the Plan's contract holders, shall be repaid to the Commonwealth without interest from available operating revenue of the Plan in excess of amounts required for the payment of current obligations of the Plan.