

Department of Planning and Budget 2014 Fiscal Impact Statement

1. Bill Number: HB 1123

House of Origin ☒ Introduced ☐ Substitute ☐ Engrossed
Second House ☐ In Committee ☐ Substitute ☐ Enrolled

2. Patron: Delegate Morris

3. Committee: Education

4. Title: Permit students and recognized student organizations the right to hire counsel in disciplinary cases

5. Summary: This bill grants any student enrolled at one of Virginia's public institutions of higher education or any officially recognized student organization accused of violating rules and regulations for the conduct of students, punishable by a suspension of more than 10 days or expulsion, the right to hire legal counsel or a non-attorney advocate at their expense. Students are not permitted to have representation when accused of "academic dishonesty" as defined by an institution.

This bill also provides students and student organizations the right to review of the institution's final decision in the appropriate circuit court within one year. The court is to award successful petitioners compensatory damages, reasonable court costs, attorney fees, including expert fees, and any other relief in equity or law that is deemed appropriate, including (a) a de novo rehearing at the public institution of higher education and (b) monetary damages of not less than the cost of tuition paid by the student, or on the student's behalf, to the public institution of higher education for the semester during which the alleged violation occurred plus monetary damages of not less than the amount of any scholarship funding lost as a result of the campus discipline.

Finally, this bill's provisions would apply to all allegations of violating an institution's rules and regulations of student conduct on or after July 1, 2014.

6. Budget Amendment Necessary: Yes. Items 56, 162, 178, 193, 204, and 221

7. Fiscal Impact Estimates: Preliminary (see Section 8)

7a. Expenditure Impact:

<i>Fiscal Year</i>	<i>Dollars</i>	<i>Positions</i>	<i>Fund</i>
2015	\$208,667	2.0	GF
2015	\$497,575	5.0	NGF
2016	\$208,667	2.0	GF
2016	\$497,575	5.0	NGF
2017	\$208,667	2.0	GF
2017	\$497,575	5.0	NGF

2018	\$208,667	2.0	GF
2018	\$497,575	5.0	NGF
2019	\$208,667	2.0	GF
2019	\$497,575	5.0	NGF
2020	\$208,667	2.0	GF
2020	\$497,575	5.0	NGF

- 8. Fiscal Implications:** There are 17 public institutions of higher education in the Commonwealth. Each of which operates at least one, but sometimes multiple disciplinary systems with the power to expel or suspend students. While accused students typically have a right to an adviser from the campus community and some are permitted to have an attorney attend hearings, none of those systems currently permit students to have an attorney act as an advocate during the disciplinary proceedings. These proceedings are intended to be primarily educational for both the students who may need to take responsibility for their actions and the community members endeavoring to hold them accountable. These systems are usually run by a combination of students and student affairs professionals with the advice, but not direct involvement, of the institution's attorney.

Should students be afforded the right to representation, as proposed by this bill, it is anticipated that the proceedings would become more legalistic, requiring changes to the structure and preparation. The guidelines for the processes and the training of the decision-makers would need to address the types of issues that lawyers are likely to inject into the proceedings (objections, evidentiary concerns, etc.).

In addition, this bill creates an opportunity for judicial review and provides for statutory damages and shifting of litigation costs, all of which increase the likelihood that the decisions of these disciplinary systems would be challenged in court. This could result in increased caseloads for circuit courts in college towns. However, it is anticipated that the affected courts would be able to adjudicate the additional cases using present resources. As a result of possible court involvement, the higher education institutions would be obligated to have legal counsel present at all hearings in order to reduce the risk of compensable errors.

Given this, the Office of the Attorney General (OAG) believes this proposal will significantly increase the need for direct attorney involvement in the administration of the disciplinary systems of Virginia's institutions of higher education. The OAG estimates that an additional full-time attorney would be required at each of the larger campuses who have attorneys on-site (University of Virginia, Virginia Tech, George Mason University, Virginia Commonwealth University, and Old Dominion University). The direct costs associated with those attorneys are typically born by the employing institutions. The table above shows the estimated cost to these five institutions totaling \$497,575 annually. This cost would need to be covered by institutional operating funds generated from tuition and fees.

However, the responsibility of supervising those attorneys would fall on the OAG. In addition, the smaller institutions could probably be advised centrally by OAG attorneys. Legal consulting on these issues would likely require a presence on campus with the associated travel time. Therefore, it is estimated that two additional OAG attorneys would be

needed to sufficiently protect the Commonwealth's interests at an estimated cost of \$208,667 annually in general fund support as noted in the table above.

Finally, it is anticipated that all public institutions of higher education would incur costs associated with training staff and students on the processes that would need to be implemented as a result of this proposed legislation. These potential costs cannot be determined

9. Specific Agency or Political Subdivisions Affected: Virginia's institutions of higher education, circuit courts, and the Office of the Attorney General

10. Technical Amendment Necessary: N/A

11. Other Comments: None.

Date: 01/30/14 sas

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c: Secretary of Education