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HOUSE BILL NO. 1062

Offered January 13, 2016

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A *BILL to amend and reenact § 23-38.88 of the Code of Virginia, relating to restructured financial and operational authority for certain public institutions of higher education.*

Patron—Jones

Referred to Committee on Education

Be it enacted by the General Assembly of Virginia:

1. That § 23-38.88 of the Code of Virginia is amended and reenacted as follows:

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

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

1. To dispose of their surplus materials at the location where the surplus materials are held and to retain any proceeds from such disposal as provided in subdivision B 14 of § 2.2-1124;

2. To have the option, as provided in subsection C of § 2.2-1132 and pursuant to the conditions and provisions under such subsection, to contract with a building official of the locality in which construction is taking place and for such official to perform any inspection and certifications required for the purpose of complying with the Uniform Statewide Building Code (§ 36-97 et seq.) pursuant to subsection C of § 36-98.1;

3. For those public institutions of higher education that have in effect a signed memorandum of understanding with the Secretary of Administration regarding participation in the nongeneral fund decentralization program as set forth in the appropriation act, as provided in subsection C of § 2.2-1132, to enter into contracts for specific construction projects without the preliminary review and approval of the Division of Engineering and Buildings of the Department of General Services, provided such institutions are in compliance with the requirements of the Virginia Public Procurement Act (§ 2.2-4300 et seq.) and utilize the general terms and conditions for those forms of procurement approved by the Division and the Office of the Attorney General;

4. To acquire easements as provided in subdivision 4 of § 2.2-1149;

5. To enter into an operating/income lease or capital lease pursuant to the conditions and provisions provided in subdivision 5 of § 2.2-1149;

6. To convey an easement pertaining to any property such institution owns or controls as provided in subsection C of § 2.2-1150;

7. In accordance with the conditions and provisions of subdivision C 2 of § 2.2-1153, to sell surplus real property valued at less than \$5 million, which is possessed and controlled by the institution;

8. For purposes of compliance with § 2.2-4310, to procure goods, services, and construction from a vendor that the institution has certified as a small, women-owned, and minority-owned business enterprise pursuant to the conditions and provisions provided in § 2.2-1609;

9. To be exempt from review of their budget request for information technology by the CIO as provided in subdivision A 4 of § 2.2-2007;

10. To be allowed to establish policies for the designation of administrative and professional faculty positions at the institution pursuant to the conditions and provisions provided in subsection E of § 2.2-2901;

11. To receive the financial benefits described under § 2.2-5005 pursuant to the conditions and provisions of such section;

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

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

14. The restructured financial and operational authority set forth in ~~Article~~ *Subchapter 2* (§ 23-38.90) and ~~Article~~ *Subchapter 3* (§ 23-38.91 et seq.).

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

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

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59 shall commit to the Governor and the General Assembly to:

60 1. Consistent with its institutional mission, provide access to higher education for all citizens
61 throughout the Commonwealth, including underrepresented populations, and, consistent with subdivision
62 4 of § 23-9.6:1 and in accordance with anticipated demand analysis, meet enrollment projections and
63 degree estimates as agreed upon with the State Council of Higher Education for Virginia. Each such
64 institution shall bear a measure of responsibility for ensuring that the statewide demand for enrollment is
65 met;

66 2. Consistent with § 23-38.87:17, ensure that higher education remains affordable, regardless of
67 individual or family income, and through a periodic assessment, determine the impact of tuition and fee
68 levels net of financial aid on applications, enrollment, and student indebtedness incurred for the payment
69 of tuition and fees;

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

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

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

79 6. Consistent with its institutional mission, develop articulation, dual admissions, and guaranteed
80 admissions agreements with all Virginia community colleges and offer dual enrollment programs in
81 cooperation with high schools;

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

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

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

92 10. Prepare a six-year financial plan consistent with § 23-38.87:17;

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

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

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

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

116 As provided in subsection C of § 23-9.6:1.01, any public institution of higher education that has been
117 certified during the fiscal year by the State Council of Higher Education for Virginia as meeting the
118 institutional performance benchmarks in effect for the fiscal year as set forth in the general appropriation
119 act shall be provided the financial benefits under § 2.2-5005. Such benefits shall first be provided as
120 determined under such section. Objective criteria for measuring performance with regard to the state

121 goals and objectives developed pursuant to subsection B, and benefits or consequences for meeting or
122 not meeting those goals and objectives, shall be developed as provided in subdivision B 5 of
123 § 23-38.87:20.

124 D. 1. The restructured financial and operational authority set forth in ~~Article~~ *Subchapter 3*
125 (§ 23-38.91 et seq.) shall only be granted in accordance with the expressed terms of a management
126 agreement between the public institution of higher education and the Commonwealth.

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

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

136 a. (i) Its most current and unenhanced bond rating received from (a) Moody's Investors Service, Inc.,
137 (b) Standard & Poor's, Inc., or (c) Fitch Investor's Services, Inc. is at least AA- (i.e., AA minus) or its
138 equivalent, provided that such bond rating has been received within the last three years of the date that
139 the initial agreement is entered into or (ii) the institution has (a) participated in decentralization pilot
140 programs in the areas of finance and capital outlay, (b) demonstrated management competency in those
141 two areas as evidenced by a written certification from the Cabinet Secretary or Secretaries designated by
142 the Governor, (c) received additional operational authority under a memorandum of understanding
143 pursuant to § 23-38.90 in at least one functional area, and (d) demonstrated management competency in
144 that area for a period of at least two years. In submitting "The Budget Bill" for calendar year 2005
145 pursuant to subsection A of § 2.2-1509, the Governor shall include criteria for determining whether or
146 not an institution has demonstrated the management competency required by clause (ii);

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

151 c. The institution agrees to reimburse the Commonwealth for any additional costs to the
152 Commonwealth in providing health or other group insurance benefits to employees, and in undertaking
153 any risk management program, that are attributable to the institution's exercise of any restructured
154 financial or operational authority set forth in ~~Article~~ *Subchapter 3* (§ 23-38.91 et seq.). The institution's
155 agreement to reimburse the Commonwealth for such additional costs shall be expressly included in each
156 management agreement with the institution. The Secretary of Finance and the Secretary of
157 Administration, in consultation with the Virginia Retirement System and the affected institutions, shall
158 establish procedures for determining any amounts to be paid by each institution and a mechanism for
159 transferring the appropriate amounts directly and solely to the programs whose costs have been affected.

160 In developing management agreements, public institutions of higher education shall give
161 consideration to potential future impacts of tuition increases on the Virginia College Savings Plan
162 (§ 23-38.75) and shall discuss such potential impacts with parties participating in development of such
163 agreements. The chief executive officer of the Virginia College Savings Plan shall provide to the
164 institution and such parties the Plan's assumptions underlying the contract pricing of the program; and

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

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

174 If an existing agreement is not renewed or a new agreement executed prior to the expiration of the
175 three-year or five-year term, as applicable, the existing agreement shall remain in effect on a provisional
176 basis for a period not to exceed one year. If, after the expiration of the provisional one-year period, the
177 management agreement has not been renewed or a new agreement executed, the institution shall no
178 longer be granted any of the financial or operational authority set forth in ~~Article~~ *Subchapter 3*
179 (§ 23-38.91 et seq.), unless and until such time as a new management agreement is entered into between
180 the institution and the Commonwealth.

181 The Joint Legislative Audit and Review Commission, in cooperation with the Auditor of Public

182 Accounts, shall conduct a review relating to the initial management agreement with each public
183 institution of higher education. The review shall cover a period of at least the first 24 months from the
184 effective date of the management agreement. The review shall include, but shall not be limited to, the
185 degree of compliance with the expressed terms of the management agreement, the degree to which the
186 institution has demonstrated its ability to manage successfully the administrative and financial operations
187 of the institution without jeopardizing the financial integrity and stability of the institution, the degree to
188 which the institution is meeting the objectives described in subsection B, and any related impact on
189 students and employees of the institution from execution of the management agreement. The Joint
190 Legislative Audit and Review Commission shall make a written report of its review no later than June
191 30 of the third year of the management agreement. The Joint Legislative Audit and Review Commission
192 is authorized, but not required, to conduct a similar review of any management agreement entered into
193 subsequent to the initial agreement.

194 4. The right and power by the Governor to void a management agreement shall be expressly included
195 in each management agreement. The management agreement shall provide that if the Governor makes a
196 written determination that a public institution of higher education that has entered into a management
197 agreement with the Commonwealth is not in substantial compliance with the terms of the agreement or
198 with the requirements of this chapter in general, (i) the Governor shall provide a copy of that written
199 determination to the chairmen of the Board of Visitors or other governing body of the public institution
200 of higher education and to the members of the General Assembly, and (ii) the institution shall develop
201 and implement a plan of corrective action, satisfactory to the Governor, for purposes of coming into
202 substantial compliance with the terms of the management agreement and with the requirements of this
203 chapter, as soon as practicable, and shall provide a copy of such corrective action plan to the members
204 of the General Assembly. If after a reasonable period of time after the corrective action plan has been
205 implemented by the institution, the Governor determines that the institution is not yet in substantial
206 compliance with the management agreement or the requirements of this chapter, the Governor may void
207 the management agreement. Upon the Governor voiding a management agreement, the affected public
208 institution of higher education shall not be allowed to exercise any restructured financial or operational
209 authority pursuant to the provisions of ~~Article~~ *Subchapter 3* (§ 23-38.91 et seq.) unless and until the
210 institution enters into a subsequent management agreement with the Secretary or Secretaries designated
211 by the Governor or the void management agreement is reinstated by the General Assembly.

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

218 6. Following the execution of each management agreement with a public institution of higher
219 education and submission of that management agreement to the Chairmen of the House Committee on
220 Appropriations, the House Committee on Education, the Senate Committee on Finance, and the Senate
221 Committee on Education and Health pursuant to § 23-38.97, the Governor shall include a
222 recommendation for approval of the management agreement in "The Budget Bill" submitted pursuant to
223 subsection A of § 2.2-1509 or in his gubernatorial amendments submitted pursuant to subsection E of
224 § 2.2-1509 due by the December 20 that immediately follows the date of submission of the management
225 agreement to such Committees. Following the General Assembly's consideration of whether to approve
226 or disapprove the management agreement as recommended, if the management agreement is approved as
227 part of the general appropriation act, it shall become effective on the effective date of such general
228 appropriation act. However, no management agreement shall be entered into by a public institution of
229 higher education and the Secretary or Secretaries designated by the Governor after November 15 of a
230 calendar year.

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