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HOUSE BILL NO. 515

Offered January 13, 2016

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A BILL to amend and reenact § 23-38.88 of the Code of Virginia, relating to public institutions of higher education; efforts to stimulate economic development.

Patron—Landes

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 2 (§ 23-38.90) and Article 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
84 agreement set forth in Article 3 (§ 23-38.91 et seq.), ~~in~~ *the* areas that lag the Commonwealth in terms
85 of income, employment, and other factors *and annually report to the Governor and the General*
86 *Assembly on such active contributions*;

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

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

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

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

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

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

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

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

determined under such section. Objective criteria for measuring performance with regard to the state goals and objectives developed pursuant to subsection B, and benefits or consequences for meeting or not meeting those goals and objectives, shall be developed as provided in subdivision B 5 of § 23-38.87:20.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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