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HOUSE BILL NO. 1410**AMENDMENT IN THE NATURE OF A SUBSTITUTE**(Proposed by the House Committee on Appropriations
on February 3, 2017)

(Patrons Prior to Substitute—Delegates Albo and Hugo [HBs 1886 and 1887])

*A BILL to amend and reenact §§ 23.1-1303 and 23.1-1304 of the Code of Virginia, relating to public institutions of higher education; duties; enrollment and financial assistance.***Be it enacted by the General Assembly of Virginia:****1. That §§ 23.1-1303 and 23.1-1304 of the Code of Virginia are amended and reenacted as follows:
§ 23.1-1303. Governing boards; duties.**

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

B. The governing board of each public institution of higher education shall:

1. Adopt and post conspicuously on its website bylaws for its own governance, including provisions that (i) establish the requirement of transparency, to the extent required by law, in all board actions; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board record minutes of each open meeting and post the minutes on the board's website, in accordance with subsection I of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved in an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711; and (iii) require that the board invite the Attorney General's appointee or representative to all meetings of the board, executive committee, and board committees;

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

3. Assist the Council in enforcing the provisions relating to eligibility for financial aid;

4. Notwithstanding any other provision of state law, establish policies and procedures requiring the notification of the parent of a dependent student when such student receives mental health treatment at the institution's student health or counseling center and such treatment becomes part of the student's educational record in accordance with the federal Health Insurance Portability and Accountability Act (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part 99). Such notification shall only be required if it is determined that there exists a substantial likelihood that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs. However, notification may be withheld if any person licensed to diagnose and treat mental, emotional, or behavioral disorders by a health regulatory board within the Department of Health Professions who is treating the student has made a part of the student's record a written statement that, in the exercise of his professional judgment, the notification would be reasonably likely to cause substantial harm to the student or another person. No public institution of higher education or employee of a public institution of higher education making a disclosure pursuant to this subsection is civilly liable for any harm resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct by the institution or its employees;

5. Establish policies and procedures requiring the release of the educational record of a dependent student, as defined by the federal Family Educational Rights and Privacy Act (20 U.S.C. § 1232g), to a parent at his request;

6. Establish programs to seek to ensure that all graduates have the technology skills necessary to compete in the twenty-first century and that all students matriculating in teacher-training programs receive instruction in the effective use of educational technology;

7. Establish policies for the discipline of students who participate in varsity intercollegiate athletics, including a provision requiring an annual report by the administration of the institution to the governing

60 board regarding enforcement actions taken pursuant to such policies;

61 8. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-2900
62 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed
63 meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive
64 officer's performance. Any change to the chief executive officer's employment contract during any such
65 meeting or any other meeting of the board shall be made only by a vote of the majority of the board's
66 members;

67 9. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations
68 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter
69 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human
70 research committee to submit to the Governor, the General Assembly, and the chief executive officer of
71 the institution or his designee at least annually a report on the human research projects reviewed and
72 approved by the committee and require the committee to report any significant deviations from approved
73 proposals;

74 10. Submit the annual financial statements for the fiscal year ending the preceding June 30 and the
75 accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of
76 such statements pursuant to § 30-133;

77 11. Submit to the General Assembly and the Governor an annual executive summary of its interim
78 activity and work no later than the first day of each regular session of the General Assembly. The
79 executive summary shall be submitted as provided in the procedures of the Division of Legislative
80 Automated Systems for the processing of legislative documents and reports and shall be posted on the
81 General Assembly's website;

82 12. Make available to any interested party upon request a copy of the portion of the most recent
83 report of the Uniform Crime Reporting Section of the Department of State Police entitled "Crime in
84 Virginia" pertaining to institutions of higher education;

85 13. Adopt policies or institution regulations regarding the ownership, protection, assignment, and use
86 of intellectual property and provide a copy of such policies to the Governor and the Joint Commission
87 on Technology and Science. All employees, including student employees, of public institutions of higher
88 education are bound by the intellectual property policies of the institution employing them; and

89 14. Adopt policies that are supportive of the intellectual property rights of matriculated students who
90 are not employed by such institution.

91 *C. The board of visitors of each baccalaureate public institution of higher education, except Virginia*
92 *Military Institute, Norfolk State University, and Virginia State University, shall adopt policies*
93 *prohibiting the annual enrollment of full-time equivalent undergraduate non-Virginia students, as*
94 *reported pursuant to the Council's report E5C, from exceeding 30 percent of the total annual enrollment*
95 *of full-time equivalent undergraduate students, as reported pursuant to the Council's report E5A, unless*
96 *the board, after covering the cost to educate each full-time equivalent undergraduate non-Virginia*
97 *student that exceeds such 30 percent cap with tuition revenue from such students, uses any remaining*
98 *tuition revenue from such students to lower in equal amounts the rate of tuition and fees charged to*
99 *each undergraduate Virginia student.*

100 *D. The governing board of each public institution of higher education has a duty to the*
101 *Commonwealth and its citizens.*

102 **§ 23.1-1304. Governing boards; additional duties; educational programs.**

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

110 B. Educational programs for the governing boards of public institutions of higher education shall
111 include presentations relating to:

112 1. Board members' duty to the Commonwealth *and its citizens*;

113 2. Governing board committee structure and function;

114 3. The duties of the executive committee set forth in § 23.1-1306;

115 4. Professional accounting and reporting standards;

116 5. Methods for meeting the statutory, regulatory, and fiduciary obligations of the board;

117 6. The requirements of the Virginia Freedom of Information Act (§ 2.2-3700 et seq.), developed and
118 delivered in conjunction with the Freedom of Information Advisory Council;

119 7. Institutional ethics and conflicts of interest;

120 8. Creating and implementing regulations and institution policies;

121 9. Business operations, administration, budgeting, financing, financial reporting, and financial

reserves, including a segment on endowment management;

10. Fixing student tuition, mandatory fees, and other necessary charges;

11. Overseeing planning, construction, maintenance, expansion, and renovation projects that affect the institution's consolidated infrastructure, physical facilities, and natural environment, including its lands, improvements, and capital equipment;

12. Workforce planning, strategy, and investment;

13. Institutional advancement, including philanthropic giving, fundraising initiatives, alumni programming, communications and media, government and public relations, and community affairs;

14. Student welfare issues, including academic studies; curriculum; residence life; student governance and activities; and the general physical and psychological well-being of undergraduate and graduate students;

15. Current national and state issues in higher education;

16. Future national and state issues in higher education;

17. Relations between the governing board and the chief executive officer of the institution, including perspectives from chief executive officers of public institutions of higher education;

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

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

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

2. That the Joint Subcommittee on the Future Competitiveness of Virginia Higher Education shall evaluate the use of both in-state and out-of-state student tuition revenue for student financial aid at public institutions of higher education and shall consider, as necessary, appropriate limits on such practice and national best practices.

3. That the provisions of subsection C of § 23.1-1303 of the Code of Virginia, as amended by this act, shall become effective on July 1, 2018.

4. That the provisions of subsection C of § 23.1-1303 of the Code of Virginia, as amended by this act, are subject to the conditions on non-Virginia undergraduate student enrollment set forth in subdivision b 2 d of § 4-2.01 of Chapter 780 of the Acts of Assembly of 2016.