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HOUSE BILL NO. 2653

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Appropriations
on January 30, 2019)

(Patron Prior to Substitute—Delegate Cox)

A *BILL to amend and reenact § 23.1-306 of the Code of Virginia, relating to public institutions of higher education; institutional partnership performance agreements.*

Be it enacted by the General Assembly of Virginia:

1. That § 23.1-306 of the Code of Virginia is amended and reenacted as follows:

§ 23.1-306. Public institutions of higher education; six-year plans; institutional partnership performance agreements.

A. The governing board of each public institution of higher education shall (i) develop and adopt biennially in odd-numbered years and amend or affirm biennially in even-numbered years a six-year plan for the institution; (ii) submit a preliminary version of such plan to the Council, the General Assembly, the Governor, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance no later than July 1 of each odd-numbered year; and (iii) submit preliminary amendments to or a preliminary affirmation of each such plan to the Council, the General Assembly, the Governor, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance no later than July 1 of each even-numbered year. Each such preliminary plan and preliminary amendment to or preliminary affirmation of such plan shall include a report of the institution's active contributions to efforts to stimulate the economic development of the Commonwealth, the area in which the institution is located, and, for those institutions subject to a management agreement set forth in Article 4 (§ 23.1-1004 et seq.) of Chapter 10, the areas that lag behind the Commonwealth in terms of income, employment, and other factors. Each such preliminary plan and preliminary amendment to or preliminary affirmation of such plan shall be submitted as a report document as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents and reports. No such preliminary plan, amendments, or affirmation shall be posted on the General Assembly's website.

B. The Secretary of Finance, the Secretary of Education, the Director of the Department of Planning and Budget, the Director of the Council, *the President of the Virginia Economic Development Partnership*, the Staff Director of the House Committee on Appropriations, and the Staff Director of the Senate Committee on Finance, or their designees, shall review each institution's preliminary plan, amendments, or affirmation and provide comments to the institution on such plan, amendments, or affirmation by September 1 of the relevant year. Each institution shall respond to any such comments by October 1 of that year and submit a finalized version of such plan, amendments, or affirmation to the Council, the General Assembly, the Governor, and the Chairmen of the House Committee on Appropriations, the House Committee on Education, the Senate Committee on Education and Health, and the Senate Committee on Finance no later than December 1 of that year. Each such finalized version shall be submitted as a report document 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.

C. Each plan shall be structured in accordance with, and be consistent with, the objective and purposes of this chapter set forth in § 23.1-301 and the criteria developed pursuant to § 23.1-309 and shall be in a form and manner prescribed by the Council, in consultation with the Secretary of Finance, the Secretary of Education, the Director of the Department of Planning and Budget, the Director of the Council, *the President of the Virginia Economic Development Partnership*, the Staff Director of the House Committee on Appropriations, and the Staff Director of the Senate Committee on Finance, or their designees.

D. Each six-year plan shall (i) address the institution's academic, financial, and enrollment plans, including the number of Virginia and non-Virginia students, for the six-year period; (ii) indicate the planned use of any projected increase in general fund, tuition, or other nongeneral fund revenues; (iii) be based upon any assumptions provided by the Council, following consultation with the Department of Planning and Budget and the staffs of the House Committee on Appropriations and the Senate Committee on Finance, for funding relating to state general fund support pursuant to §§ 23.1-303, 23.1-304, and 23.1-305 and subdivision 9; (iv) be aligned with the institution's six-year enrollment projections; and (v) include:

1. Financial planning reflecting the institution's anticipated level of general fund, tuition, and other nongeneral fund support for each year of the next biennium;

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2. The institution's anticipated annual tuition and educational and general fee charges required by (i) degree level and (ii) domiciliary status, as provided in § 23.1-307;

3. Plans for providing financial aid to help mitigate the impact of tuition and fee increases on low-income and middle-income students and their families as described in subdivision 9, including the projected mix of grants and loans;

4. Degree conferral targets for undergraduate Virginia students;

5. Plans for optimal year-round use of the institution's facilities and instructional resources;

6. Plans for the development of an instructional resource-sharing program with other public institutions of higher education and private institutions of higher education;

7. Plans with regard to any other incentives set forth in § 23.1-305 or any other matters the institution deems appropriate;

8. The identification of (i) new programs or initiatives including quality improvements and (ii) institution-specific funding based on particular state policies or institution-specific programs, or both, as provided in subsection C of § 23.1-307; and

9. An institutional student financial aid commitment that, in conjunction with general funds appropriated for that purpose, provides assistance to students from both low-income and middle-income families and takes into account the information and recommendations resulting from the review of federal and state financial aid programs and institutional practices conducted pursuant to subdivisions B 2 and C 1 of § 23.1-309.

E. In developing such plans, each public institution of higher education shall consider potential future impacts of tuition increases on the Virginia College Savings Plan and ABLE Savings Trust Accounts (§ 23.1-700 et seq.) and shall discuss such potential impacts with the Virginia College Savings Plan. The chief executive officer of the Virginia College Savings Plan shall provide to each institution the Plan's assumptions underlying the contract pricing of the program.

F. 1. In conjunction with the plans included in the six-year plan as set forth in subsection D, each public institution of higher education may propose, and the General Assembly may adopt by reference in the general appropriation act, an institutional partnership performance agreement (agreement) that advances the objectives of this chapter by aligning the strategies, activities, and investments of the institution, the Commonwealth, and any identified partners concerning (i) college access, affordability, cost predictability, and employment pathways for undergraduate Virginia students and (ii) strategic talent development and other high-priority economic initiatives of the Commonwealth, thereby providing a stable regulatory and financial environment that will facilitate planning, collaboration, and investment in furtherance of such objectives.

2. Each agreement shall include the institution's college affordability and cost predictability plan and may include other provisions related to student outcomes, strategic economic initiatives, identified public sector or private sector partners, institutional performance and innovation, and the undertakings and commitments of the institution, the Commonwealth, and any identified partners relating to such matters.

3. The college affordability and cost predictability plan set out in each agreement shall address the institution's plans for (i) undergraduate Virginia student enrollment, (ii) the net cost of attendance, consisting of tuition and fees less student financial aid, for undergraduate Virginia students at all income levels over the two-year or four-year course of study leading to a degree, (iii) the anticipated aggregate student loan obligations of undergraduate Virginia students upon completion of a degree, (iv) work-study, loan forgiveness, and other work-related opportunities to defray higher education costs, and (v) the corresponding expectations regarding the Commonwealth's policies and financial support.

4. The strategic economic initiative provisions of any agreement may include (i) initiatives to meet identified state or regional workforce needs in industries or sectors where education and skills gaps are impeding or will likely impede significant economic growth and job creation, including initiatives that may be included in a memorandum of understanding with the Commonwealth to provide grants to increase the number of degrees awarded in specific technology-related fields; (ii) initiatives to attract and retain talent in the Commonwealth and prevent migration of students to other states after graduation; (iii) initiatives to promote collaboration with Virginia-based employers on internships, apprenticeships, work-study, and other experiential learning opportunities; (iv) initiatives to enhance the Commonwealth's position in research and innovation, including initiatives related to new business startups and commercial applications of discoveries; (v) support for local, regional, and state economic development activities; (vi) activities to improve health, education, and economic opportunity in distressed rural and urban areas of the Commonwealth; (vii) activities to improve the economic prosperity of and quality of life in the Commonwealth; (viii) collaborations among institutions of higher education, business organizations, and other public or private sector partners related to the foregoing; and (ix) undertakings by the institution, the Commonwealth, or identified partners related to the foregoing.

5. The institutional performance and innovation provisions of any agreement may include (i) performance measures and performance-based funding for initiatives included in the agreement; (ii)

enrollment management autonomy, subject to specified commitments related to undergraduate Virginia student enrollment; (iii) opportunities for institutional innovation and process improvements; and (iv) collaboration among institutions, business organizations, and other public sector or private sector partners.

6. As an expression of mutual intention by the institution, the Commonwealth, and, where applicable, identified partners, each agreement shall be set out in a memorandum of understanding and shall not become effective unless it is adopted by reference by the General Assembly in the general appropriation act. No agreement creates a legally enforceable obligation on the part of the institution, the Commonwealth, any party to the agreement, or any partner identified pursuant to the agreement.

7. No agreement shall be construed to diminish or affect the authority of the governing board of the institution to set tuition and fees or to take other action within its purview under the laws of the Commonwealth, provided, however, that adherence to the terms of the agreement by the institution is a prerequisite for adherence to terms of the agreement by or on behalf of the Commonwealth and adherence to the terms of the agreement by the Commonwealth is a prerequisite for adherence to terms of the agreement by or on behalf of the institution.

8. Specific enrollment management authority may be conferred upon an institution pursuant to an agreement unless otherwise expressly provided by law.

9. No agreement shall modify or supersede the institution's management agreement or memorandum of understanding entered into pursuant to the Restructured Higher Education Financial and Administrative Operations Act (§ 23.1-1000 et seq.).

10. Development and approval of any agreement shall proceed in tandem with consideration of the institution's six-year plan, as follows:

a. An institution that intends to propose an agreement shall communicate such intention as early as practicable, but not later than April 1 of the year in which the agreement will be proposed, to the reviewers listed in subsection B, the co-chairmen of the Joint Subcommittee on the Future Competitiveness of Virginia Higher Education, and the Governor. In developing a proposed agreement, the institution shall consider the Commonwealth's educational and economic policies and priorities, including those reflected in the Virginia Plan for Higher Education issued by the Council, the economic development policy developed pursuant to § 2.2-205, the strategic plan developed pursuant to § 2.2-2237.1, relevant regional economic growth and diversification plans prepared by regional councils pursuant to the Virginia Growth and Opportunity Act (§ 2.2-2484 et seq.), and any additional guidance provided by the Joint Subcommittee on the Future Competitiveness of Virginia Higher Education and the Governor.

b. An institution that proposes an agreement shall include the proposed agreement with its submission of the preliminary version of its six-year plan pursuant to clause (ii) of subsection A or with its preliminary amendment or affirmation submission pursuant to clause (iii) of subsection A.

c. The reviewers listed in subsection B or their designees shall review and comment on any proposed agreement in accordance with the six-year plan review and comment process established in subsection B and may expedite such review and comment process to facilitate the executive and legislative budget process or for other reasons. No later than October 15 of the relevant year, the reviewers shall communicate to the Governor and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance their recommendation regarding each proposed agreement. If discussions towards an agreement are ongoing but not complete by October 15, the reviewers shall communicate to the Governor and the Chairmen of the House Committee on Appropriations and the Senate Committee on Finance no later than October 15 of that year the status of discussions regarding the agreement, and shall communicate their recommendation regarding the agreement as soon as practicable thereafter.

d. Each agreement shall include evidence of its approval by the institution's governing board and shall be adopted by reference in the general appropriation act. The agreement may be concluded at any time prior to final action by the General Assembly on the general appropriation act.

e. Any agreement may be modified by the same process as it is approved as set forth in this subdivision.