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SENATE BILL NO. 1197

Offered January 11, 2023

Prefiled January 10, 2023

A BILL to amend and reenact §§ 23.1-102.1, 23.1-108, and 23.1-1303 of the Code of Virginia, relating to public institutions of higher education; transparency.

Patrons—Reeves, Cosgrove, Hackworth, Newman and Obenshain

Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:

1. That §§ 23.1-102.1, 23.1-108, and 23.1-1303 of the Code of Virginia are amended and reenacted as follows:

§ 23.1-102.1. Number and salaries of certain employees; lobbying contracts; report.

The governing board of each public institution of higher education shall report by September 1 of each year to the Chairmen of the House Committees on Appropriations and Education and the Senate Committees on Finance and Appropriations and on Education and Health ~~the~~ *and make publicly available on the institution's website in a position of prominence:*

1. The salary by position of any executive officer of such institution that exceeds for the previous fiscal year the salary limit for the chief executive officer for such institution set forth in the general appropriation act*;*

2. The number of diversity officers and government relations officers employed by such institution and the salary of each such officer; and

3. The total value of any contract with any outside individual or entity to provide lobbying services for such institution.

§ 23.1-108. Foundations; annual reporting requirements.

A. ~~Each~~ *Except as otherwise provided in subsection B, each* public institution of higher education shall release an annual report regarding foundations associated with the institution setting forth foundation expenses. The annual report shall *be made publicly available on the institution's website in a position of prominence, shall be presented annually to the governing board of the institution, and shall* include:

1. The total annual expenditures by each foundation;
2. The percentage of expenditures used for scholarships or financial aid by each foundation;
3. The percentage of expenditures used for faculty compensation by each foundation;
4. The percentage of expenditures used for program costs by each foundation;
5. The percentage of expenditures used for equipment and technology by each foundation;
6. The percentage of expenditures used for administrative support by each foundation; ~~and~~
7. The percentage of expenditures used for executive compensation by each foundation*;*
8. The percentage of expenditures used for diversity, equity, and opportunity compensation;
9. The percentage of expenditures used for government relations and lobbying activities; and
10. The percentage of expenditures used for compensation of the chief executive officer.

B. ~~This section~~ *The requirements set forth in subdivisions A 1 through 7* shall not apply to the Virginia Community College System.

§ 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 H 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;

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2. ~~Establish and maintain~~ *Make publicly available* on the institution's website *in a position of prominence* (i) a listing of all board members, including the name of the Governor who made each appointment and the date of each appointment; (ii) a listing of all committees created by the board and the membership of each committee; (iii) a schedule of all upcoming meetings of the full board and its committees and instructions for the public to access such meetings; (iv) *within 10 business days after the date of any meeting of the full board or any of its committees,* an archive of agendas ~~and~~, supporting materials*, and video recordings* for each *such* meeting ~~of the governing board and its committees that was held~~; ~~and~~ (v) an email address or email addresses that allow board members to receive public communications pertaining to board business*; and (vi) a link that permits any member of the public to livestream each meeting of the full board and its committees. The governing board shall record video of each meeting of the full board and its committees*;

3. 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;

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

5. 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;

6. 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;

7. 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;

8. 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 board regarding enforcement actions taken pursuant to such policies;

9. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief executive officer's performance. Any change to the chief executive officer's employment contract during any such meeting or any other meeting of the board shall be made only by a vote of the majority of the board's members. *Prior to any vote to enter into or renew a contract for the employment of the chief executive officer of the institution, the board shall hold a public meeting to provide an opportunity for written, virtual, and in-person public comment on such contract at least 120 days prior to any such meeting at which it will vote to enter into or renew such contract and shall provide notice of such public meeting in accordance with subsection C of § 2.2-3707. The institution shall make such contract publicly available on the institution's website in a position of prominence in advance of such public meeting. No governing board of a public institution of higher education shall extend or renew the contract of the chief executive officer of the institution more than 120 days in advance of the expiration of the chief executive officer's existing contract*;

10. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter

5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human research committee to submit to the Governor, the General Assembly, and the chief executive officer of the institution or his designee at least annually a report on the human research projects reviewed and approved by the committee and require the committee to report any significant deviations from approved proposals;

11. Submit and make publicly available on the institution's website the annual financial statements for the fiscal year ending the preceding June 30 and the accounts and status of any ongoing capital projects to the Auditor of Public Accounts for the audit of such statements pursuant to § 30-133;

12. No later than December 1 of each year, report to the Council and make publicly available on the institution's website (i) the value of investments as reflected on the Statement of Net Position as of June 30 of the previous fiscal year, excluding any funds derived from endowment donations, endowment income, or other private philanthropy; (ii) the cash earnings on such balances in the previous fiscal year; and (iii) the use of the cash earnings on such balances. In the event that the commitment of any such investment earnings spans more than one fiscal year, the report shall reflect the commitments made in each future fiscal year. The reports of the Boards of Visitors of Virginia Commonwealth University and the University of Virginia shall exclude the value of and earnings on any investments held by the Virginia Commonwealth University Health System Authority and the University of Virginia Medical Center, respectively. As used in this subdivision, "investments" includes all short-term, long-term, liquid, and illiquid Statement of Net Position accounts, and subaccounts thereof, in which moneys have been invested in securities.*;*

13. Submit to the General Assembly and the Governor and make publicly available on the institution's website an annual executive summary of its interim activity and work 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;

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

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

16. Adopt policies that are supportive of the intellectual property rights of matriculated students who are not employed by such institution; and

17. Solicit the input of representatives of the institution's faculty senate or its equivalent (i) at least twice per academic year on topics of general interest to the faculty and (ii) in advance of decisions to be made on the search for the institution's new chief executive officer.