

1996 SESSION

ENROLLED

HOUSE JOINT RESOLUTION NO. 184

Establishing the Commission on the Impact of Certain Federal Court Decisions on the Commonwealth's Institutions of Higher Education.

Agreed to by the House of Delegates, February 8, 1996

Agreed to by the Senate, February 29, 1996

WHEREAS, in the United States today, a college degree is the gateway to opportunity for many citizens and it is important to encourage minority youth to pursue postsecondary education and training to continue the progress begun by their forebearers; and

WHEREAS, the United States Supreme Court, in *United States v. Fordice* 112 S. Ct. 2727 (1992), ruled that states, such as Virginia, which previously operated dual segregated systems of higher education, have a legal obligation to remove all vestiges of past discrimination "to the extent practicable and consistent with sound educational practices"; and

WHEREAS, *Fordice* established in higher education the principles of *Brown v. Board of Education*, 978 F.2d 585 (10th Cir. 1992), which required the desegregation of the nation's public schools; and

WHEREAS, the Southern Education Foundation noted in its recent report, *Redeeming the American Promise*, that "more than forty-one years after the decision in *Brown v. Board of Education*, none of the southern states surveyed demonstrate an acceptable level of success in desegregating their higher education systems," and Virginia is included among the states to which this finding is attributed; and

WHEREAS, the Southern Education Foundation also found that "opportunity for minorities in higher education is restricted, limited, fragmented, and uneven, with blacks lagging behind in student and faculty representation, access, and graduation rates" because of the lack of substantial improvement in the desegregation of the systems of higher education among such states; and

WHEREAS, the Southern Education Foundation has proffered compelling recommendations designed to assist states in implementing the directives in *Fordice* which they may consider to provide African-American and other minority students more educational opportunities and greater access to higher education consistent with *Fordice*; and

WHEREAS, the recommendations of the Southern Education Foundation focus on student-centered policies which would require that (i) all students meet more rigorous academic standards, (ii) all segments of the educational process be held accountable, (iii) revolutionary educational reform involve the entire system of education, preschool through graduate and professional schools, (iv) student-centered policies reflect sound educational practices, and (v) policies initiated by states pursuant to *Fordice* facilitate the creation of increased opportunities for all students rather than the advocacy for quotas; and

WHEREAS, states are encouraged to incorporate these recommendations into their educational policies; and

WHEREAS, as a result of the 1970 federal court decision modified in *Adams v. Richardson*, 480 F.2d 1159 (D.C. Cir. 1973), Virginia, together with nine other states, was required to submit a plan for removing the remaining vestiges of the state's dual system of higher education to the United States Office for Civil Rights as a means to remedy the underrepresentation of minorities in Virginia institutions of higher education; and

WHEREAS, the Virginia Plan for Equal Opportunity in Higher Education, although never codified, was funded by the General Assembly to increase higher education opportunities for minorities, but a current statewide plan for equal education opportunity which reflects the Supreme Court's ruling in *Fordice* has not been developed; and

WHEREAS, the Joint Legislative Audit and Review Commission (JLARC), in its recent report on the evaluation of the State Council of Higher Education for Virginia noted the need for a current statewide plan for the "continued administration and monitoring of equal education opportunity programs to ensure effective and efficient use of State resources"; and

WHEREAS, the United States Office for Civil Rights has officially notified Virginia of its intent to review the "State's efforts to fulfill its desegregation plan and to eliminate all vestiges of the de jure system, in light of *Fordice*"; and

WHEREAS, the Joint Subcommittee Studying the Status of and Need for Academic Preparation, Financial Aid, and Incentive Programs to Encourage Minorities to Pursue Postsecondary Education and Training, House Joint Resolution No. 199 (1994), has found that several factors contribute to minority underrepresentation at the collegiate level, and that a comprehensive examination and analysis of the immediate and long-term implications of recent federal court decisions, including *Fordice*, is warranted, and the recommendations of the Southern Education Foundation for Virginia should be considered; now, therefore, be it

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RESOLVED by the House of Delegates, the Senate concurring, That the Commission on the Impact of Certain Federal Court Decisions on the Commonwealth's Institutions of Higher Education be established. The Commission shall consist of 9 members to be appointed as follows: 5 members of the House of Delegates to be appointed by the Speaker of the House; and 4 members of the Senate to be appointed by the Senate Committee on Privileges and Elections. The Commission may also seek the participation of persons with expertise in the structure and governance of the public and private K-12 and higher education systems; civil rights, education, and constitutional law; higher education funding mechanisms; student financial aid; business and industry; job training, economic and workforce development; and representatives of the Southern Education Foundation, all of whom shall act in an advisory and voluntary capacity without compensation to the Commission. The Commission shall also confer with the Virginia Secretary of Education, the Office of the Attorney General for Virginia, the U. S. Office of the Secretary of Education, the U. S. Office for Civil Rights, the U. S. Department of Justice, and such other public and private agencies and entities as it deems appropriate in the furtherance of its work.

The Commission shall (i) review and consider the findings and recommendations of the Joint Subcommittee Studying the Status of and Need for Academic Preparation, Financial Assistance, and Incentive Programs to Encourage Minorities to Pursue Postsecondary Education and Training, HJR 199 (1994), and the Southern Education Foundation; (ii) determine the legal obligations of the Commonwealth and the education policy implications relative to federal and state court rulings to desegregate the public and higher education systems, including, but not limited to, *Fordice*, *Adams*, *Podberesky v. Kirwan* 38 F.3d 147 (4th Cir. 1994), *Knight v. State of Alabama* 14 F.3d (11th Cir. 1994), *Adarand Constructors, Inc. v. Peña* 115 S.Ct. 2097 (1995), *Missouri v. Jenkins*, 115 S.Ct. 2038 (1995), and related executive orders of the President and legislative proposals in the Congress; (iii) evaluate the status of the Virginia Plan for Equal Opportunity in Higher Education relative to the 1973 decision in *Adams* and subsequent agreements between the U. S. Office for Civil Rights and the Commonwealth, and relevant findings and recommendations of the Joint Legislative Audit and Review Commission; (iv) review and analyze the components of and funding for the Virginia Plan for Equal Opportunity in Higher Education, and recommend such changes as may be appropriate; (v) recommend revisions in the statewide Plan which comply with the 1973 decision in *Adams* and subsequent agreements between the U. S. Office for Civil Rights and the Commonwealth, and the directives in *Fordice*, and which reflect the recommendations of the Southern Education Foundation, as appropriate; (vi) recommend specific immediate and long-term initiatives to fully implement the revised Plan and the directives in *Fordice* to expand educational opportunities for all Virginians, giving particular attention to the need to increase the numbers of African-American and other minority students, faculty, and administrators at the undergraduate and graduate levels, and in the professional schools; and (vii) consider such other related issues as the Commission deems appropriate.

The Division of Legislative Services shall provide staff support for the Commission.

The State Council of Higher Education, the Virginia Community College System, the Department of Education, and the staffs of the House Committee on Appropriations and Senate Committee on Finance shall provide technical assistance for the study.

All agencies of the Commonwealth shall provide assistance in the manner that the Commission deems necessary, upon request.

The Commission shall complete its work in time to submit its findings and recommendations to the Governor and the 1997 Session of the General Assembly as provided in the procedures of the Division of Legislative Automated Systems for the processing of legislative documents.

The direct costs of this study shall not exceed \$8,900. An estimated \$800 is allocated for materials and resources. Such expenses shall be funded from the operational budget of the Clerk of the House of Delegates.

Implementation of this resolution is subject to subsequent approval and certification by the Joint Rules Committee. The Committee may withhold expenditures or delay the period for the conduct of the study.