

23104711D

HOUSE BILL NO. 1800

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education
on January 30, 2023)

(Patron Prior to Substitute—Delegate Freitas)

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.

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 executive staff members, including all administrative staff directly reporting to the chief executive officer of such institution, employed by such institution or any educational foundation associated with such institution and the salary and compensation of each such executive staff member; 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 total annual expenditures used for executive or administrative compensation for each department;

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;

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

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

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

79 5. Notwithstanding any other provision of state law, establish policies and procedures requiring the
80 notification of the parent of a dependent student when such student receives mental health treatment at
81 the institution's student health or counseling center and such treatment becomes part of the student's
82 educational record in accordance with the federal Health Insurance Portability and Accountability Act
83 (42 U.S.C. § 1320d et seq.) and may be disclosed without prior consent as authorized by the federal
84 Family Educational Rights and Privacy Act (20 U.S.C. § 1232g) and related regulations (34 C.F.R. Part
85 99). Such notification shall only be required if it is determined that there exists a substantial likelihood
86 that, as a result of mental illness the student will, in the near future, (i) cause serious physical harm to
87 himself or others as evidenced by recent behavior or any other relevant information or (ii) suffer serious
88 harm due to his lack of capacity to protect himself from harm or to provide for his basic human needs.
89 However, notification may be withheld if any person licensed to diagnose and treat mental, emotional,
90 or behavioral disorders by a health regulatory board within the Department of Health Professions who is
91 treating the student has made a part of the student's record a written statement that, in the exercise of
92 his professional judgment, the notification would be reasonably likely to cause substantial harm to the
93 student or another person. No public institution of higher education or employee of a public institution
94 of higher education making a disclosure pursuant to this subsection is civilly liable for any harm
95 resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct
96 by the institution or its employees;

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

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

103 8. Establish policies for the discipline of students who participate in varsity intercollegiate athletics,
104 including a provision requiring an annual report by the administration of the institution to the governing
105 board regarding enforcement actions taken pursuant to such policies;

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

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

122 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human
123 research committee to submit to the Governor, the General Assembly, and the chief executive officer of
124 the institution or his designee at least annually a report on the human research projects reviewed and
125 approved by the committee and require the committee to report any significant deviations from approved
126 proposals;

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

130 12. No later than December 1 of each year, report to the Council and make publicly available on the
131 institution's website (i) the value of investments as reflected on the Statement of Net Position as of June
132 30 of the previous fiscal year, excluding any funds derived from endowment donations, endowment
133 income, or other private philanthropy; (ii) the cash earnings on such balances in the previous fiscal year;
134 and (iii) the use of the cash earnings on such balances. In the event that the commitment of any such
135 investment earnings spans more than one fiscal year, the report shall reflect the commitments made in
136 each future fiscal year. The reports of the Boards of Visitors of Virginia Commonwealth University and
137 the University of Virginia shall exclude the value of and earnings on any investments held by the
138 Virginia Commonwealth University Health System Authority and the University of Virginia Medical
139 Center, respectively. As used in this subdivision, "investments" includes all short-term, long-term, liquid,
140 and illiquid Statement of Net Position accounts, and subaccounts thereof, in which moneys have been
141 invested in securities;

142 13. Submit to the General Assembly and the Governor and make publicly available on the
143 institution's website an annual executive summary of its interim activity and work no later than the first
144 day of each regular session of the General Assembly. The executive summary shall be submitted as
145 provided in the procedures of the Division of Legislative Automated Systems for the processing of
146 legislative documents and reports and shall be posted on the General Assembly's website;

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

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

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

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