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SENATE BILL NO. 1358

Offered January 11, 2023

Prefiled January 11, 2023

A *BILL to amend and reenact § 23.1-1303 of the Code of Virginia, relating to public institutions of higher education; duties of governing boards; student enrollment growth.*

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Referred to Committee on Education and Health

Be it enacted by the General Assembly of Virginia:**1. That § 23.1-1303 of the Code of Virginia is 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 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;

2. Establish and maintain on the institution's website (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) an archive of agendas and supporting materials for each 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;

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

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59 resulting from such disclosure unless such disclosure constitutes gross negligence or willful misconduct
60 by the institution or its employees;

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

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

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

70 9. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29
71 (§ 23.1-2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a
72 closed meeting pursuant to subdivision A 1 of § 2.2-3711 and deliver an evaluation of the chief
73 executive officer's performance. Any change to the chief executive officer's employment contract during
74 any such meeting or any other meeting of the board shall be made only by a vote of the majority of the
75 board's members;

76 10. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations
77 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter
78 5.1 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human
79 research committee to submit to the Governor, the General Assembly, and the chief executive officer of
80 the institution or his designee at least annually a report on the human research projects reviewed and
81 approved by the committee and require the committee to report any significant deviations from approved
82 proposals;

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

86 12. No later than December 1 of each year, report to the Council and make publicly available on the
87 institution's website (i) the value of investments as reflected on the Statement of Net Position as of June
88 30 of the previous fiscal year, excluding any funds derived from endowment donations, endowment
89 income, or other private philanthropy; (ii) the cash earnings on such balances in the previous fiscal year;
90 and (iii) the use of the cash earnings on such balances. In the event that the commitment of any such
91 investment earnings spans more than one fiscal year, the report shall reflect the commitments made in
92 each future fiscal year. The reports of the Boards of Visitors of Virginia Commonwealth University and
93 the University of Virginia shall exclude the value of and earnings on any investments held by the
94 Virginia Commonwealth University Health System Authority and the University of Virginia Medical
95 Center, respectively. As used in this subdivision, "investments" includes all short-term, long-term, liquid,
96 and illiquid Statement of Net Position accounts, and subaccounts thereof, in which moneys have been
97 invested in securities.

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

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

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

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

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

116 18. Adopt policies providing that the percentage of students enrolled at the institution shall be
117 capped at a two percent increase over a biennium.