

HOUSE BILL NO. 1800

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education

on \_\_\_\_\_)

(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.**

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

- 30 1. The total annual expenditures by each foundation;
- 31 2. The percentage of expenditures used for scholarships or financial aid by each foundation;
- 32 3. The percentage of expenditures used for faculty compensation by each foundation;
- 33 4. The percentage of expenditures used for program costs by each foundation;
- 34 5. The percentage of expenditures used for equipment and technology by each foundation;
- 35 6. The percentage of expenditures used for administrative support by each foundation; ~~and~~
- 36 7. The percentage of expenditures used for executive compensation by each foundation;
- 37 8. The total annual expenditures used for executive or administrative compensation for each  
 38 department;
- 39 9. The percentage of expenditures used for government relations and lobbying activities; and
- 40 10. The percentage of expenditures used for compensation of the chief executive officer.

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

43 **§ 23.1-1303. Governing boards; duties.**

44 A. For purposes of this section, "intellectual property" means (i) a potentially patentable machine,  
 45 article of manufacture, composition of matter, process, or improvement in any of those; (ii) an issued  
 46 patent; (iii) a legal right that inheres in a patent; or (iv) anything that is copyrightable.

47 B. The governing board of each public institution of higher education shall:

- 48 1. Adopt and post conspicuously on its website bylaws for its own governance, including  
 49 provisions that (i) establish the requirement of transparency, to the extent required by law, in all board  
 50 actions; (ii) describe the board's obligations under the Virginia Freedom of Information Act (§ 2.2-3700  
 51 et seq.), as set forth in subdivision B 10 of § 23.1-1301, including the requirements that (a) the board  
 52 record minutes of each open meeting and post the minutes on the board's website, in accordance with

53 subsection H of § 2.2-3707 and § 2.2-3707.1, (b) discussions and actions on any topic not specifically  
54 exempted by § 2.2-3711 be held in an open meeting, (c) the board give public notice of all meetings, in  
55 accordance with subsection C of § 2.2-3707, and (d) any action taken in a closed meeting be approved in  
56 an open meeting before it can have any force or effect, in accordance with subsection B of § 2.2-3711;  
57 and (iii) require that the board invite the Attorney General's appointee or representative to all meetings of  
58 the board, executive committee, and board committees;

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

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

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

78         5. Notwithstanding any other provision of state law, establish policies and procedures requiring  
79 the notification of the parent of a dependent student when such student receives mental health treatment

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

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

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

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

105           9. In addition to all meetings prescribed in Chapters 14 (§ 23.1-1400 et seq.) through 29 (§ 23.1-  
106 2900 et seq.), meet with the chief executive officer of the institution at least once annually, in a closed

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

119 10. If human research, as defined in § 32.1-162.16, is conducted at the institution, adopt regulations  
120 pursuant to the Administrative Process Act (§ 2.2-4000 et seq.) to effectuate the provisions of Chapter 5.1  
121 (§ 32.1-162.16 et seq.) of Title 32.1 for human research. Such regulations shall require the human research  
122 committee to submit to the Governor, the General Assembly, and the chief executive officer of the  
123 institution or his designee at least annually a report on the human research projects reviewed and approved  
124 by the committee and require the committee to report any significant deviations from approved proposals;

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

128 12. No later than December 1 of each year, report to the Council and make publicly available on  
129 the institution's website (i) the value of investments as reflected on the Statement of Net Position as of  
130 June 30 of the previous fiscal year, excluding any funds derived from endowment donations, endowment  
131 income, or other private philanthropy; (ii) the cash earnings on such balances in the previous fiscal year;  
132 and (iii) the use of the cash earnings on such balances. In the event that the commitment of any such  
133 investment earnings spans more than one fiscal year, the report shall reflect the commitments made in

134 each future fiscal year. The reports of the Boards of Visitors of Virginia Commonwealth University and  
135 the University of Virginia shall exclude the value of and earnings on any investments held by the Virginia  
136 Commonwealth University Health System Authority and the University of Virginia Medical Center,  
137 respectively. As used in this subdivision, "investments" includes all short-term, long-term, liquid, and  
138 illiquid Statement of Net Position accounts, and subaccounts thereof, in which moneys have been invested  
139 in securities;

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

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

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

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

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

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