

LEGISLATIVE ALERT #3
AAUP/FSVA/VCU FACULTY SENATE
JANUARY 30, 2011

HIGHER EDUCATION OPPORTUNITY ACT
MARCHES FORWARD

The Virginia Higher Education Opportunity Act (HB 2510; SB 1459) is an omnibus reform bill that would enact recommendations that came out of the Governor's Commission on Higher Education Reform, Innovation and Investment. Introduced on January 21, the legislation has already cleared the House Committee on Appropriations on a unanimous vote January 26. The Senate Committee on Education and Health rereferred the bill to Senate Finance. Please see page 2 for analysis of the bill. I welcome all comments, **especially regarding provisions that in the Senate version of the bill would empower a new Advisory Committee to make recommendations regarding an institution's peer review institutions for faculty salary comparisons** (bottom of page 2).

VRS NEWS

Jim Lollar has been attending Compensation and Retirement sub-committee hearings in both houses, and has met with Robert Schultze, Director of the Virginia Retirement System. Discussions about the Governor's budget proposals (see page 5) continue in both the legislative and executive branches. **The FSVA and AAUP may send out another call for faculty e-mails to selected officials on this matter soon!**

LEGISLATIVE ACTIONS THIS WEEK

Summary of legislative actions on bills we are tracking. Hope you like my **red light (defeated)-green light (cleared a legislative hurdle)** system!

Bills we support

SB 747 Nondiscrimination in state employment. Approved in committee and is before the full Senate. See page 3 for details.

SB 797 Virginia Human Rights Act; unlawful discriminatory practice; sexual orientation. Defeated in Committee. See page 3 for details.

SB 831 Issuance of civil investigative demands under the Virginia Fraud Against Taxpayers Act. Approved in sub-committee. See page 4 for details.

Bills we oppose

HB 1465 Admission of illegal aliens at institutions of higher education. Approved with amendments in sub-committee. See page 6 for details.

Virginia Higher Education Opportunity Act

Key features of the bill are funding criteria designed to make state base adequacy funding for institutions more predictable; provide funding incentives for meeting targeted economic and innovation goals; codification of articulation, transfer, and dual enrollment and admissions agreements; the creation of a Higher Education Revenue Stabilization Fund within the state's Revenue Stabilization Fund (the "Rainy Day" fund); the creation of public-private partnerships in STEM (science, technology, engineering, math) and health-care related professions; and the creation of a Higher Education Advisory Committee.

The bill includes positive proposals and areas of concern. The legislation would codify certain policies such as the 67/33 percent funding split between general fund support (state support) and non-general fund support (tuition, mainly) for the cost of education for Virginia students, and the 60th percentile goal for faculty salaries compared to each institution's peer institutions. It would set in place mechanisms for funding to follow enrollment growth, and additional funding to address unfunded enrollment growth since 2005. Of course, positive language will need to be backed with dollars, but the higher education community will be able to point to these provisions in future budget negotiations.

Areas of concern to faculty include:

- Targeted economic and innovation incentives. This section includes language that:
 - Uses improved retention and graduation rates, and technology-enhanced instruction, as metrics for increased funding. We all support improving retention and graduation rates, but we hope to avoid perverse incentives that might undermine quality in order to retain and graduate students. We also must be alert for technology instruction initiatives that interfere with faculty control of the curriculum and/or fail to understand the labor-intensive nature of high-quality teaching, regardless of mode of delivery.
 - Encourages "optimal year-round utilization of resources." Implementation of this provision could create many unintended consequences relating to faculty 9-month contracts and use of ever more contingent faculty.
- Creation of STEM Public-Private Partnership. This provision creates an advisory body that would develop strategies for increasing STEM degree completion. It includes language that would allow the Partnership to "assess degree programs using such economic opportunity metrics as marketplace demand, earning potential, employer satisfaction, and other indicators of ... economic value and impact of degrees to students as they make career choices and to state policy-makers and university decision-makers as they decide how to allocate scarce resources;" and it would allow the Partnership to make recommendations to "align state higher education efforts with marketplace demands."
- Creation of the Higher Education Advisory Committee. This Committee seems something of a permanent Governor's Commission, whose activities would overlap and perhaps limit the functions of SCHEV as a coordinating body. There is no specific provision to include faculty on the Advisory Committee's membership. The Advisory Committee would also be empowered to make recommendations regarding "economic opportunity metrics," and would review the "factors used in selecting peer institutions for public institutions of higher education." [This provision was eliminated in the House.]

The Virginia Higher Education Opportunity Act will almost certainly pass in some form. Much of the language at this point only creates the framework for future policy-making. It will be essential for Virginia's faculty to speak out as the framework is used to develop future policy.

Information about legislation can be found at <http://leg1.state.va.us/>.

BILLS WE SUPPORT

FACULTY RIGHTS AND CONCERNS

NON-DISCRIMINATION BILLS

HB 2046 (Chief Patron: Del. Adam Ebbin, plus 34 other delegates and 6 senators)

Nondiscrimination in public employment.

Prohibits discrimination in state employment based on race, color, religion, national origin, sex, pregnancy, childbirth or related medical conditions, age, marital status, disability, sexual orientation, or status as a special disabled veteran or other veteran covered by the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended. The bill defines "sexual orientation" as a person's actual or perceived heterosexuality, bisexuality, homosexuality, or gender identity or expression. The bill expressly provides that "sexual orientation" shall not include any person's attraction toward persons with whom sexual conduct would be illegal due to the age of the parties.

SB 747 (Chief Patron: Sen. Donald McEachin, House Patrons: Delegates Betsy Carr, Rosalyn Dance, David Englin, Kaye Kory, Jennifer McClellan)

This is the companion bill to HB 2046.

SB 747 was **approved** in the Committee on General Laws and Technology on a party line vote, and is now before the full Senate. Brian Turner spoke in favor of the bill on behalf of the AAUP.

HB 1964 (Chief Patron: Del. Thomas Rust; co-patrons: Delegates David Albo, Betsy Carr, and Lee Ware)

This version differs in that it does not provide a definition of "sexual orientation," which means it would exclude language regarding gender identity and expression. While HB 2046 is a superior bill in that it provides an inclusive definition of "sexual orientation," it is significant that HB 1964 is patroned by three House Republicans and one House Democrat.

SB 797 (Chief patron: Sen. Mamie Locke) and HB 1755 (Chief patron: Del. Kenneth Plum) Human Rights Act; adds sexual orientation to definition of unlawful discriminatory practices.

Adds sexual orientation and gender identity to the safeguards for all individuals in the Commonwealth from unlawful discrimination. The bill defines sexual orientation and gender identity.

SB 797 was **defeated** in the Committee on General Laws and Technology on a 7-7 vote, when Senator Colgan failed to leave a proxy vote in favor.

All of these bills except HB 1964 are supported by Equality Virginia. The House bills are before the Committee on General Laws, Sub-Committee #4 Professions/Occupations and Administrative Process.

ACADEMIC FREEDOM

SB 831 (Chief patron: Sen. Chap Petersen; House patron: Del. David Toscano) and SB 1314 (Chief patron: Sen. Donald McEachin)

Virginia Fraud Against Taxpayers Act; issuance of civil investigative demands

These two bills seek to limit the Attorney General's ability to file civil investigative demands (essentially civil subpoenas). The bills were filed in response to Attorney General Ken Cuccinelli's CID seeking documents under the authority of the Virginia Fraud Against Taxpayers Act about climate change research conducted by Dr. Michael Mann while he was on the faculty at the University of Virginia. SB 831 would restrict the Attorney General's authority in matters of academic inquiry or research. SB 1314, which would have eliminated this authority altogether under the Virginia Fraud Against Taxpayers Act, has been rolled into SB 831 (this effectively means that only SB 831 continues, with Senator McEachin a co-patron).

SB 831 was approved by the Courts of Justice Committee, Civil Sub-Committee, on January 27 on a 5-2 vote (Edwards, Lucas, Puller, Saslaw, Petersen, yeas; Quayle, Obenshain, nays). Brian Turner spoke in support of the bill on behalf of the AAUP. The Attorney General's office argued that the bill would threaten Virginia's entitlement to collect a 10% increase in any amount recovered in a false claims case brought under the Fraud Against Taxpayers Act. The federal Deficit Reduction Act of 2005 allows states to collect this 10% if the state false claims law meets standards for compliance developed under the federal Act. The Sub-Committee majority found the Attorney General office's argument that SB 831 would put Virginia out of compliance with federal standards to be "a stretch." Senator Petersen asked specifically that the Attorney General provide the Committee with a letter from the federal government supporting the AG's claim.

SB 831 will be heard by the Committee on Courts of Justice on Monday, January 31, 9:00 a.m., Senate Room A.

FUNDING

Amendment Item 469#1s to SB 800 (Senator Roscoe Reynolds)

This amendment would increase the base salary of faculty in the VRS by five percent, thus covering the entire impact of the Governor's proposal to require state employees to pay the 5% contribution to the retirement fund. Governor McDonnell's proposal is for a three percent base salary increase.

Amendment item 198.3 to HB 1500 (Delegates Betsy Carr, Jennifer McClellan, and James Scott)

This amendment would restore the \$17,175,399 to VCU's non-general fund budget that Governor McDonnell seeks to cut.

HB 2346 (Chief patron: Joe Morrissey)**Public institutions of higher education; compensation of athletic coaches**

This bill would require that the board of visitors of every public institution of higher education adopt and implement policies such that the annual total compensation provided to any coach of an intercollegiate athletic team shall not include more than \$300,000 of state funding.

The bill is currently before the House Education Sub-Committee #4 Higher Education and the Arts.

BILLS WE OPPOSE***FUNDING*****Amendment item 469 in HB 1500 and SB 800**

This amendment is the Governor's proposal to require state employees to contribute 5% of their salary to contributions to the VRS, in exchange for a 3% pay increase, and to reduce the state's contribution to ORP participants from 10.4% to 8.5%. HB 1500 and SB 800 are before House Appropriations and Senate Finance Committees, respectively.

Amendment item 1-198 to HB 1500

Cuts non-general fund budget to Virginia Commonwealth University by 50% in Fiscal Year 2012 (a total of \$17,175,399) "to allow VCU to reevaluate its Spring, 2010 tuition increase of 32 percent."

This is the Governor's amendment to punish VCU for its tuition increases. Note that resources raised by the tuition increase have gone into hiring full-time faculty; the kind of investment necessary to provide quality education to a growing number of students. Delegates Betsy Carr, Jennifer McClellan, and James Scott have offered **Budget Amendment item 198.3**, which would restore the \$17,175,399 to VCU's non-general fund budget.

FACULTY RIGHTS AND CONCERNS**SB 918 (Chief patron: Sen. Ryan McDougle****Virginia Fusion Intelligence Center.**

Allows the Virginia Fusion Intelligence Center to receive and integrate criminal-related intelligence information, not just terrorist-related intelligence, to assist in preventing and deterring criminal activity generally.

Fusion Centers are designed to collect intelligence on potential terrorist and public security threats. A leaked 2009 Virginia Fusion Center Report entitled "2009 Virginia Terrorism Threat Assessment" concluded that the state's colleges were "nodes of radicalization," focusing especially on HBCUs. The ACLU opposes these bills given the Fusion Center's tendency to "stereotype and exaggerate" perceived threats and because the Center "has resisted attempts to become more accountable to the public."

SB 918 is before the Committee on Courts of Justice, Criminal Sub-Committee.

SB 1250 (Chief patron: Sen. Jill Holtzman Vogel)**Regulation of firearms by state entities**

Prohibits any department, agency, or other entity of the Commonwealth from adopting or enforcing any rule, regulation, or policy regarding firearms or ammunition except for those rules, regulations, or policies expressly authorized by statute. Any rule, regulation, or policy adopted prior to July 1, 2011, without express statutory authority would be invalid. The prohibition would not apply to local, state, or regional correctional facilities or facilities operated by the Department of Behavioral Health and Developmental Services.

This bill is before the Committee on Rules, Sub-Committee #1, and is scheduled for a hearing on **Tuesday, February 1, 10:00 a.m., 4th Floor East Conference Room.**

STUDENT ACCESS**HB 2053 (Chief patron: Del. Timothy Hugo and Del. David Albo)****Higher education institutions; board of visitors set rules so 75% enrolled be Virginia residents.**

This bill Provide that the board of visitors or other governing body of each public institution of higher education, except for the Virginia Military Institute, Norfolk State University, and Virginia State University, must establish rules and regulations requiring that at least 75 percent of students admitted and enrolled at the institution be Virginia domiciles.

The House Education Sub-Committee #4 Higher Education and the Arts referred the bill to the Committee on Appropriations.

ANTI-DREAM ACT BILLS

The Dream Act is a proposal at the federal level that died in the lame-duck session in 2010. It would enable certain individuals brought to the U.S. as children and who have graduated from U.S. high schools access to college and in-state tuition. The AAUP supports the Dream Act. Virginia has no Dream Act bills before the legislature this year, but as usual several bills opposing this concept have been filed.

HB 1465 (Delegates Peace and J.H. Miller, chief patrons)**Higher education institutions; admission of illegal aliens**

This bill would deny an alien who is unlawfully present in the United States shall not be eligible for admission to any public institution of higher education in Virginia. Delegate Cline's bill, HB 2153, which was less draconian in that it would have denied such persons eligibility for in-state tuition and financial aid, was incorporated into HB 1465.

The Committee on Courts of Justice, Sub-Committee #3 Immigration approved the bill on a 4-2 vote (Gilbert, Albo, Miller, J.H., Cleaveland, yeas; Watts, Hope, nays). The bill is now before the full Courts of Justice Committee.