

LEGISLATIVE ALERT #2
AAUP/FSVA/VCU FACULTY SENATE
JANUARY 23, 2011

THANKS TO ALL OF THOSE WHO TOOK ACTION ON THE VRS ISSUE! Read more about this on page 3.

Dear colleagues,

The AAUP, FSVA, and VCU Faculty Senate held the ninth annual Virginia Higher Education Advocacy Day on January 13, the second day of the 2011 session. Twenty-eight participants from nine institutions, plus nine students from Randolph-Macon College, participated in a full day of advocacy. With several “precincts” yet to report, we visited well over one-half of the 139 (one vacancy) offices of members of the General Assembly, including 56 of the 99 delegates and 24 out of 40 senators. We met directly with sixteen delegates and seven senators!

A highlight of the day was the presentation of the Colonel Michael S. Harris Award for exemplary service in support of higher education to Senator Edd Houck of Spotsylvania.



**Senator Houck receives the Harris Award from the
University of Mary Washington delegation.
From left: Joe Romero, Suzanne Sumner, Senator Houck, Denis Nissim-Sabat, and
Craig Vasey (Virginia Conference AAUP President)**

OUR POSITIONS ON HIGHER EDUCATION ADVOCACY DAY

Faculty members presented three position papers (available soon at www.aaup-va.org) to legislators. These addressed concerns about contributions to retirement plans, proposed reforms in higher education, and non-discrimination for sexual orientation in public institutions.

GOVERNOR MCDONNELL'S PROPOSAL TO CUT PENSION SUPPORT

The key issue this legislative session is the Governor's proposal to require public employees to pay the 5% employee contribution to the Virginia Retirement System. The state began paying this 5% in 1983 in exchange for no pay raises at that time. The Governor offers a 3% pay increase and holds out the possibility of a 2% bonus to employees in units that meet certain cost-saving efficiencies. Further, the Governor calls for a 1.9% reduction, from 10.4% to 8.5%, in the state's contribution to Optional Retirement Plans (ORPs) for faculty. Faculty in ORPs would not get the 3% pay raise. The bottom line for this proposal is that state workers will suffer a 2% reduction in compensation – *a pay cut* – after three years without pay raises. These cuts are designed supposedly to cover the \$17.6 million in unfunded liabilities facing the VRS. We argue that the state should cover these liabilities by paying the Board-certified rates instead of chronically underfunding VRS, and should not impose a tax applied only to Virginia's public employees.

VIRGINIA HIGHER EDUCATION OPPORTUNITY ACT

Governor McDonnell announced in December that he would present a legislative package to be called the Virginia Higher Education Opportunity Act. While we find the goals of this proposal – economic opportunity, reform-based investment, and affordable access – to be laudable, we expressed concerns about threats to academic freedom as represented in the increasing use of contingent faculty and the chilling of the climate for teaching and research caused by the actions of the Attorney General, and about the importance of shared governance as institutions look for efficient ways to accommodate a growing number of students and enhance the use of distance learning.

The Virginia Higher Education Opportunity Act was introduced on January 21 as **HB 2510 by Delegate Kirkland Cox and SB 1459 by Senator Edd Houck**. Look for more news and evaluation of this major piece of legislation in the next Legislative Alert.

NONDISCRIMINATION FOR SEXUAL ORIENTATION

Various of bills have been introduced that would provide for nondiscrimination protection for public employees on the basis of sexual orientation. This issue was addressed in 2010, when Senator Donald McEachin filed similar legislation in response to Governor McDonnell's failure to provide this protection by executive order. Governors Warner and Kaine had included sexual orientation in their executive orders. After the House of Delegates defeated Senator McEachin's bill in committee, Attorney General Ken Cuccinelli issued a letter to the state's public colleges and universities suggesting that a review of campus policies that do provide nondiscrimination protection was warranted in that such policies had no legal authorization.

Faculty and Public Employees Rally Against Governor's Pay Cut Proposal

Perhaps hundreds of faculty contacted their legislators in response to calls from the AAUP, the FSVA, and the Virginia Governmental Employees Association (VGEA). Many of the offices we visited on Higher Education Advocacy Day reported that they had received “very many” and “oodles” of messages from faculty. **Thanks to all of you who took this action. And it is not too late to contact your Delegates and Senators about this issue!** The specific language in the budget bill is below. We **oppose** Item 469, T.1. and T.3.

Amendment item 469 in HB 1500 and SB

T.1. Every “state employee” who is not a “person who becomes a member on or after July 1, 2010,” as those terms are defined in § 51.1-124.3, shall be required to pay member contributions on a salary reduction basis in accordance with § 414(h) of the Internal Revenue Code in the amount of five percent of creditable compensation, effective July 1, 2011, if the employee is (i) a member covered by the defined benefit plan of the Virginia Retirement System established under Chapter 1 of Title 51.1 (§ 51.1-100 et seq.), (ii) a member of the State Police Officers' Retirement System under Chapter 2 of Title 51.1 (§ 51.1-200 et seq.), (iii) a member of the Virginia Law Officers' Retirement System under Chapter 2.1 of Title 51.1 (§ 51.1-211 et seq), or (iv) a member of the Judicial Retirement System under Chapter 3 of Title 51.1 (§ 51.1-300 et seq.).

2. The base salary of employees described in subparagraph T.1. hereof shall be increased by three percent on July 1, 2011.

3. The retirement contribution by the Commonwealth on behalf of an employee who is not a person who becomes a member on or after July 1, 2010, participating in an optional retirement plan maintained by the Virginia Retirement System Board of Trustees or in an optional retirement plan established by his institution of higher education under §51.1-126 shall, pursuant to procedures established by the Virginia Retirement System Board of Trustees, be at least 8.5 percent but not more than 8.9 percent of creditable compensation, effective July 1, 2011. The portion of the employer contribution in excess of 8.5 percent of creditable compensation shall not be funded from the general fund of the state treasury, but shall be paid from other funds.

Senator Roscoe Reynolds (Martinsville) has filed **budget amendment 469#1s** that increase the base salary to five percent, thus covering the entire impact of the Governor's proposal on state employees. No budget amendments have been filed to address the status of faculty in ORPs.

IN THE NEWS

Senators Donald McEachin and Chap Petersen, and Delegate David Toscano held a press conference in the Capitol on January 18 regarding their bills to **restrict the Attorney General's ability to attack academic freedom**. Brian Turner was invited to speak about faculty concerns at the press conference. The press conference can be seen at <http://www.youtube.com/user/Richmonder#p/a/u/0/qxZFN9e0JhE>.

See page 5 for more on legislation that would help **defend academic freedom in Virginia**.

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 SB 747.

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.

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. SB 747 and SB 797 are scheduled to be heard before the Committee on General Laws and Technology on **Wednesday, January 26th, 2:00 p.m.**, Senate Room B.

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 would eliminate this authority altogether under the Virginia Fraud Against Taxpayers Act.

Both bills are before Civil Sub-Committee of the Courts of Law Committee, and are scheduled to be heard **Thursday, January 27, 4:00 p.m.**, in the 4th Floor East Conference Room.

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

See page 3 for details. These bills are before House Appropriations and Senate Finance Committees.

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

HB 1953 (Chief patron: Del. Ron Villanueva) and 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.”

HB 1953 was stricken from the docket last week. 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.

One wonders what Fusion Center analysts would make of arming the “nodes of radicalization” (see HB 1953 above)! This bill is before the Committee on Rules.

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

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 2153 (Del. Cline, chief patron)

Tuition, in-state; unlawfully present aliens in U.S. shall not be eligible.

Provides that an alien who is unlawfully present in the United States shall not be eligible on the basis of residency within Virginia for any postsecondary educational benefit including, but not limited to, in-state tuition and state financial aid unless citizens or nationals of the United States are eligible for such benefits in no less an amount, duration, and scope, without regard to whether such citizens or nationals are Virginia residents.

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.

Both bills are before the Committee on Courts of Justice, Sub-Committee #3 Immigration.