

**LEGISLATIVE ALERT #4**  
**AAUP/FSVA/VCU Faculty Senate**  
**February 9, 2011**

**VRS GOOD NEWS!!!**

**Your advocacy with legislators has paid off!**

The Senate Finance General Government Sub-committee has rejected the Governor's proposal to require all state employees to pay the 5% employee contribution to VRS, and has also rejected the proposal to cut the state contribution to ORP plans by 1.9%. The Senate recommendations do not however include pay increases.

The House Appropriations Compensation and Retirement Sub-committee takes a different approach, in which the requirement for state employees to make the 5% employee contribution to VRS is compensated with a 5% increase in pay. The House also would reject the reduction in state contribution to ORP plans.

The reports from both sub-committees make very encouraging comments about support for the state's public employees. While each chamber has taken a different philosophy, *both have rejected pay cuts for state employees*. This is a significant victory for faculty and state employees!

**VCU GOOD NEWS!!!**

Both the Senate Finance Education Sub-committee and the House Appropriations Higher Education Sub-committee have restored the \$17,175,399 the Governor sought to cut from the VCU Non-General Fund budget as "punishment" for VCU's tuition increases last year.

**PLEASE TAKE THESE ACTIONS THIS WEEK**

The Senate passed two important bills last week: Senator Donald McEachin's SB 747, which adds sexual orientation and gender identity to the list of protected categories for nondiscrimination of public employees; and Senator Chap Petersen's SB 831 (co-patroned by McEachin), which carves out a protection for academic research and inquiry from the kinds of investigations currently being conducted by the Attorney General against climate scientists at the University of Virginia. These bills will face tough opposition in the House, but it is noteworthy that the Senate minority leader Thomas Norment voted in favor of both bills. Fred Quayle, also in the Republican minority in the Senate, voted for SB 831. Such political courage should be acknowledged with our thanks!

- Thank Senator [Thomas Norment](#) (Williamsburg) for voting "yes" on both SB 747 (Nondiscrimination in state employment) and SB 831 (protecting academic freedom from political intrusion).
- Thank Senator [Fred Quayle](#) (Suffolk) for voting "yes" on SB 831.
- Thank Senator [Donald McEachin](#) (Richmond) for his sponsorship of SB 747 and co-sponsorship of SB 831; and Senator [Chap Petersen](#) (Fairfax) for his sponsorship of SB 831.

Please copy Brian Turner ([bturner@rmc.edu](mailto:bturner@rmc.edu)) when you take these actions.

## 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. Both chambers have passed versions of the bill unanimously.

Both the House and Senate removed the provisions that would have empowered the new Higher Education Advisory Committee to make recommendations regarding an institution's peer review institutions for faculty salary comparisons. SCHEV will retain responsibility for approving each institution's peer review institutions. Both versions of the bill also eliminate the language to create a Higher Education Revenue Stabilization Fund (a "Rainy Day" fund), instead allowing that the Advisory Committee and SCHEV can make recommendations about the creation of such a fund in the future. Language that would have allowed institutions to carry forward non-general fund revenue to the next fiscal year was removed from both bills.

The Senate bill is superior on several counts:

- It adds a 10<sup>th</sup> purpose to the Act, which is to recognize the unique missions of the various institutions and to "afford appropriate safeguards" for the uniqueness of these missions;
- It adds language regarding the membership of the Advisory Committee that specifically recognizes "representatives of academic and instructional faculty" may be designated to serve on the Committee. This is not a requirement, and there is no prohibition of designation of faculty representatives as members in the House version, but this Senate language is the only recognition anywhere in this legislation of the concept of faculty representation;
- It removes the word "increased" or "improved" from the targeted incentives; i.e., targeted incentives will consider "Retention and graduation rates" (Senate) instead of "Improved retention and graduation rates" (House);
- It would have the Advisory Committee reporting to the House and Senate "money" and education committees as well as to the Governor; the House version has this Committee only reporting to the Governor.

Other key differences that will have to be worked out include the Senate's removal of a section in the House bill that legislates articulation, transfer, and dual enrollment and admissions agreements between two-year and four-year institutions; a House provision that permits incentives (money) to go to private institutions; and a Senate provision that would reward maintenance of effort initiatives for institutions with unique missions.

Senators Edd Houck (the AAUP Harris Award recipient this year) and Thomas Norment were the primary architects of the Senate revisions.

## LEGISLATIVE ACTIONS THIS WEEK

February 8 was “Crossover day,” after which each chamber (House and Senate) may only consider bills approved by the other chamber.

Summary of legislative actions on bills we are tracking. Recall that **red** means the bill has been defeated and **green** means the bill has cleared a legislative hurdle.

### *Bills we support*

**SB 747** Nondiscrimination in state employment. Passed the Senate 22-18.

**HB 2046** Public employment; nondiscrimination. Tabled in sub-committee.

**HB 1964** Public employment; nondiscrimination, and **HB 1755** Human Rights Act; adds sexual orientation to definition of unlawful discriminatory practices. Rolled into **HB 2046**.

**SB 831** Issuance of civil investigative demands under the Virginia Fraud Against Taxpayers Act. Passed the Senate 24-16.

**HB 2346** Public institutions of higher education; compensation of athletic coaches. Passed by indefinitely (defeated) in committee.

### *Bills we oppose*

**HB 1465** Admission of illegal aliens at institutions of higher education. Passed the House 75-24.

**SB 918** Virginia Fusion Intelligence Center. Left in Senate committee without action.

**SB 1250** Public institutions of higher education; compensation of athletic coaches. Passed by indefinitely (defeated) in committee.

**HB 2053** Higher education institutions; board of visitors set rules so 75% enrolled be Virginia residents. Tabled (defeated) in sub-committee.

### *Virginia Higher Education Opportunity Act*

**HB 2510** Passed the House 98-0.

**SB 1450** Reported from Senate Finance 15-0.

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.

The House Committee on General Laws, Sub-Committee #4 Professions/Occupations and Administrative Process considered this bill, HB 1964, and HB 1755 together, rolling the latter two into HB 2046 against the wishes of the patrons. This was clearly done to force the Committee to vote on the bill that would most clearly give actionable rights to sexual minorities. In spite of many eloquent arguments in favor of passage, the Sub-Committee voted to table the bill, thus defeating all three bills. Delegate [Betsy Carr](#) (Richmond) made several efforts to save the bill and she was the only vote against the motion to table. Please thank Delegate Carr for her support.

##### **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. It will return to the House Committee on General Laws, Sub-Committee #4 Professions/Occupations and Administrative Process. *The more people there to defend SB 747, the harder it will be to vote against it. Please try to attend when this bill comes before this Sub-Committee soon!*

##### **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.

##### **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.

## ACADEMIC FREEDOM

### **SB 831 (Chief patrons: Senators Chap Petersen and Donald McEachin; House patron: Del. David Toscano)**

#### **Virginia Fraud Against Taxpayers Act; issuance of civil investigative demands**

This bill seeks to limit the Attorney General's ability to file civil investigative demands (essentially civil subpoenas). It was 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 831 was approved by the Senate with the support of two Republican Senators, Thomas Norment and Fred Quayle. The Attorney General's office hopes to defeat the bill in the House. The success of this bill has attracted the attention of those concerned about the status of academic freedom in Virginia. We should push to get as many votes as possible in favor of the bill in the House.

## *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 will 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. Delegates Betsy Carr, Jennifer McClellan, and James Scott sponsored a successful **Budget Amendment (item 198.3)**, which will 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 was left in the Committee on Courts of Justice.

#### **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.

## *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 bill passed the House and will now go to the Senate.