

HOUSE BILL NO. 1473

AMENDMENT IN THE NATURE OF A SUBSTITUTE

(Proposed by the House Committee on Education

on _____)

(Patron Prior to Substitute—Delegate Schmidt)

A BILL to amend and reenact §§ 23.1-401 and 23.1-401.1 of the Code of Virginia, relating to public institutions of higher education; students and campus; restrictions on student speech; limitations.

Be it enacted by the General Assembly of Virginia:**1. That §§ 23.1-401 and 23.1-401.1 of the Code of Virginia are amended and reenacted as follows:****§ 23.1-401. Restrictions on student speech; limitations.**

A. No public institution of higher education shall impose restrictions on the time, place, and manner of student speech that (i) occurs in the outdoor areas of the institution's campus and (ii) is protected by the First Amendment to the ~~United States~~ Constitution of the United States unless the restrictions ~~(a) are~~:

1. ~~Are reasonable; (b) are~~ in relation to the circumstances;

2. Are justified without reference to the content or viewpoint of the regulated speech; ~~(c) are~~;

3. Are narrowly tailored to serve a significant governmental interest, as evidenced by specific and articulable facts consistent with subsection C; and ~~(d) leave~~

4. Leave open ample alternative channels for communication of the information.

B. No public institution of higher education shall:

1. Require prior administrative approval, registration, or official sponsorship as a condition of any students assembling in an outdoor area of campus;

2. Prohibit the use of amplified sound during a student assembly conducted during daytime hours and in outdoor campus spaces that are not adjacent to academic buildings, provided, however, that restrictions on the volume of amplified sound may be imposed consistent with the provisions of subsection A;

3. Withhold the award of any degree from a student solely on the basis of such student's participation in any student assembly, regardless of whether such student assembly was permitted or prohibited;

4. Restrict expressive activity to designated zones of outdoor areas of campus outside of which expressive activity is prohibited; and

5. Maintain a letter of concern or a record of disciplinary action relating to participation in an assembly in the personnel file or record of any student, faculty member, or staff member for more than one year after the incident.

C. A restriction shall be deemed narrowly tailored to serve a significant governmental interest pursuant to

subdivision A 3 only if (i) the interest at which the restriction is aimed is the prevention of a material and substantial disruption to the rights of other students, faculty, and administrators to a safe educational environment free from disruptive interference to the educational process and (ii) the restriction could not be removed and the burden on speech imposed by the restriction could not be reduced without materially interfering with the significant governmental interest. Fear or apprehension of disruptive potential of the restricted speech shall not be sufficient to establish the existence of a significant governmental interest.

§ 23.1-401.1. Constitutionally protected speech; policies, materials, and reports; report.

A. Except as otherwise permitted by the First Amendment to the United States Constitution, no public institution of higher education shall abridge the constitutional freedom of any individual, including enrolled students, faculty and other employees, and invited guests, to speak on campus.

B. Each public institution of higher education shall establish and include in its student handbook, on its website, and in its student orientation programs policies regarding speech that is constitutionally protected under the First Amendment to the United States Constitution and the process to report incidents of disruption of such constitutionally protected speech.

C. Each public institution of higher education shall develop materials on the policies established pursuant to subsection B and notify any employee who is responsible for the discipline or education of enrolled students of such materials.

D. Each public institution of higher education shall develop, post on its website in a searchable, publicly accessible, and conspicuous manner, and submit to the Governor and the Chairmen of the House Committee on Education and the Senate Committee on Education and Health no later than December 1 of each year a report on the institution's compliance with the provisions of this section that includes:

1. A copy of the institution's policies as described in subsection B and materials on such policies as described in subsection C;

2. Certification that the institution has complied with subsection C; and

3. A copy of any complaint filed in a court of law since December 1 of the preceding year to initiate a lawsuit against the institution or an employee of the institution in his official capacity for an alleged violation of the First Amendment to the United States Constitution.

E. Each public institution of higher education shall submit to the Governor and the Chairmen of the House Committee on Education and the Senate Committee on Education and Health (i) a copy of any complaint filed in a court of law to initiate a lawsuit against the institution or an employee of the institution in his

63 official capacity for an alleged violation of the First Amendment to the United States Constitution no later
64 than 30 days after such complaint is served *and (ii) a report detailing each instance in which the institution*
65 *imposes a restriction on and deems unlawful any student speech or assembly under § 23.1-401 within 45 days*
66 *of imposing such restriction, including a description of the perceived threat that justified the restriction of the*
67 *speech or assembly as unlawful and a detailed demonstration of how the restriction satisfied each factor set*
68 *forth in subsection A of § 23.1-401.*