

HOUSE No. 4099

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, October 2, 2019.

The committee on Ways and Means, to whom was referred the Bill to support improved financial stability in higher education (House, No. 4075), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4099).

For the committee,

AARON MICHLEWITZ.

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**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act to support improved financial stability in higher education.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 15A of the General Laws is hereby amended by inserting after
2 section 44 the following section:-

3 Section 45. (a) The board of higher education shall establish and implement a
4 comprehensive training program for members of the boards of trustees of public institutions of
5 higher education, as provided in section 5. The board shall provide instruction and training to
6 members on the proper governance of an institution of higher education. The instruction and
7 training shall include, without limitation, an overview of relevant: (i) open meeting law
8 requirements established under sections 18 to 25, inclusive, of chapter 30A; (ii) public records
9 law established under clause Twenty-sixth of section 7 of chapter 4 and chapter 66; (iii) conflict
10 of interest law established under chapters 268A and 268B; (iv) state procurement laws; (v) state
11 finance provisions established under chapter 29; (vi) fraud prevention; and (vii) fiduciary
12 responsibilities. The board shall consult with the attorney general and the inspector general in
13 developing instruction and training programs under this section. The board shall establish any
14 schedule it deems necessary to ensure that all appointed or elected members of the boards of

15 trustees of said public institutions complete the comprehensive training program. Thereafter,
16 members shall complete the comprehensive training program within 4 years of the date of the
17 member's last training. Membership on the boards of trustees of said public institutions shall
18 terminate if a member fails to complete the comprehensive training program within the period of
19 time established by the board, or fails to complete a training program within 4 years of the date
20 of the member's last training, and a vacancy shall be deemed to exist. Consistent with the
21 provisions of section 21 and section 1A of chapter 75, any vacancy on the boards of trustees of
22 said public institutions shall be filled for the duration of the term in the same manner as the prior
23 appointment.

24 (b) Annually, said public institutions shall post on the institution's website a copy of the
25 institution's financial report, required pursuant to section 13 of chapter 73, however termed,
26 together with a financial report summary written in terms that are understandable by the general
27 public.

28 SECTION 2. Chapter 69 of the General Laws is hereby amended by striking out section
29 31B, as appearing in the 2018 Official Edition, and inserting in place thereof the following
30 section:-

31 Section 31B. (a) As used in this section the following terms shall, unless the context
32 clearly requires otherwise, have the following meanings:

33 "Accrediting agency", an organization recognized by the United States Department of
34 Education to provide accreditation to an institution.

35 "Board", the board of higher education established in section 4 of chapter 15A.

36 “Financial screening”, a review and evaluation of an institution’s financial information,
37 conducted by the board or by an accrediting agency on behalf of the board, which is designed to
38 assess whether the institution’s financial status indicates that it may be at risk of imminent
39 closure.

40 “Governing body”, the group of persons at the institution who exercise authority, have
41 oversight or control of its matters or discharge functions of a fiduciary character for the
42 institution, including, but not limited to its board of trustees or equivalent thereof, however
43 named.

44 “Imminent closure”, a determination based on the financial screening that an institution is
45 at risk of being unable to continue operations within such period of time as the board establishes.

46 “Institution”, any independent institution of higher education located in the
47 commonwealth and authorized to grant degrees under any general or special law.

48 (b)(1) Any institution shall immediately notify the board of any known financial
49 liabilities or risks which are reasonably likely to result in the imminent closure of the institution,
50 or otherwise negatively affect the institution’s ability to fulfill its obligations to current and
51 admitted students.

52 (2) The board shall annually conduct a financial screening of each institution to assess the
53 institution’s financial information, and to identify any institution that may be at risk of imminent
54 closure.

55 (3) In lieu of conducting an annual financial screening pursuant to paragraph (2), the
56 board may accept the results of an annual financial screening of an institution conducted by an
57 accrediting agency.

58 (4) Upon a determination by the board or the accrediting agency that an institution may
59 be at risk of imminent closure, the board shall provide the institution with a summary of the basis
60 for its determination. The institution shall immediately: (1) inform the board of any known
61 liabilities, risks or financial issues; (2) provide to the board any information necessary to
62 accurately and fairly determine the institution's financial status and likelihood of imminent
63 closure, and to monitor its condition; and (3) prepare a contingency plan for closure, which shall
64 include a process for the institution or the board, or both, as determined by the board, to provide
65 appropriate notification to relevant stakeholders, as determined by the board, including, without
66 limitation, enrolled students, pending applicants, recent graduates, faculty, staff and host
67 communities. The contingency plan for closure shall also include, but shall not be limited to: (i)
68 arrangements for students to complete their programs of study; (ii) a plan for the transfer and
69 long-term maintenance of student records in the event the institution ceases to exist; (iii)
70 information about the rights and responsibilities of student loan borrowers; (iv) information
71 about the institution's financial condition, accreditation status and any outstanding compliance
72 issues regarding federal and state student financial aid programs; and (v) subject to criteria
73 established by the board, the furnishing by the institution of a bond with surety or a letter of
74 credit issued in the name of the board for the purpose of both refunding any deposits made by
75 students in anticipation of enrolling or continuing their enrollment at the institution, and for the
76 cost of protecting and maintaining student records. An institution required to submit a

77 contingency plan for closure shall provide the board with access to all financial and other records
78 upon request of the board.

79 (c) Upon a finding by the board that an institution has failed to comply with the
80 requirements of this section, the board may impose a fine not to exceed \$1,000 per day, order the
81 suspension of any state funding designated for the institution, suspend or revoke any degree
82 granting authority previously conferred upon the institution or impose other penalties the board
83 determines appropriate.

84 (d) Any information submitted to, or developed by, the board in furtherance of this
85 section shall not be considered a public record and shall be exempt from disclosure under clause
86 Twenty-sixth of section 7 of chapter 4, and section 10 of chapter 66.

87 (e) All members of an institution's governing body shall receive instruction and training
88 in higher education financial metrics, legal and fiduciary responsibilities and applicable
89 standards for accreditation at least once every 4 years.

90 (f) The governing body of an institution shall ensure that a copy of the institution's
91 annual financial screening report, however termed, is posted on the institution's website, together
92 with a financial screening report summary written in terms that are understandable by the general
93 public.

94 (g) The board shall establish rules and regulations for the administration and enforcement
95 of this section.

96 SECTION 3. Section 1A of chapter 75 of the General Laws, as appearing in the 2018
97 Official Edition, is hereby amended by adding the following 2 paragraphs:-

98 Every elected or appointed member shall complete the comprehensive training program
99 developed by the board of higher education under section 45 of chapter 15A.

100 Annually, the University of Massachusetts shall post on the institution's website a copy
101 of the institution's financial report, required pursuant to section 10 of chapter 75, however
102 termed, together with a financial report summary written in terms that are understandable by the
103 general public.