

SENATE No. 2392

Senate, October 30, 2019 – Text of the Senate amendment to the House Bill support improved financial stability in higher education (House, No. 4099, amended) (being the text of Senate document number 2387, printed as amended)

The Commonwealth of Massachusetts

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

1 SECTION 1. Chapter 15A of the General Laws is hereby amended by adding the
2 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 under section 5. The board shall provide instruction and training to the
6 members on the proper governance of a public institution of higher education. Instruction and
7 training shall include, but not be limited to, an overview of: (i) sections 18 to 25, inclusive, of
8 chapter 30A; (ii) clause Twenty-sixth of section 7 of chapter 4 and chapter 66; (iii) chapters
9 268A and 268B; (iv) state procurement laws; (v) state finance provisions under chapter 29; (vi)
10 fraud prevention; and (vii) fiduciary responsibilities. In developing instruction and training
11 programs under this section, the board shall consult with the attorney general and the inspector
12 general.

13 Members of a board of trustees of a public institutions of higher education shall complete
14 the comprehensive training program within 4 years of the date of the member's last training;
15 provided, however, that the board shall establish a schedule that ensures that all appointed or

16 elected members of the boards of trustees of said public institutions complete the comprehensive
17 training program. Membership on a board of trustees of public institutions of higher education
18 shall terminate and a vacancy shall exist if a member fails to complete the comprehensive
19 training program within the period of time established by the board or fails to complete a training
20 program within 4 years of the date of the member's last training. A vacancy on a board that
21 exists as a result of this section shall be filled for the remainder of the term in the same manner
22 as the prior appointment and be consistent with section 21 and section 1A of chapter 75.

23 (b) Annually, each public institution of higher education shall post on its website the
24 institution's financial report required pursuant to section 13 of chapter 73, however termed,
25 together with a summary of the report that is in a format understandable by the general public.

26 SECTION 2. Chapter 69 of the General Laws is hereby amended by striking out section
27 31B, as appearing in the 2018 Official Edition, and inserting in place thereof the following
28 section:-

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

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

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

34 "Financial screening", a review and evaluation of an institution's financial information,
35 conducted by the board or by an accrediting agency on behalf of the board, designed to assess
36 whether an institution's financial status indicates that it may be at risk of imminent closure.

“Governing body”, the group of persons at an institution that exercises authority and has oversight or control of its matters or discharge functions of a fiduciary character for the institution including, but not limited to, its board of trustees or equivalent.

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

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

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

(2) The board shall establish a process to annually assess each institution’s financial information to identify whether an institution is at risk of imminent closure. The assessment shall be based on a review of information received through an annual financial screening of the institution as well as any additional information submitted under clause (ii) of paragraph (3). Financial screenings may be conducted by: (i) an accrediting agency, pursuant to a memorandum of understanding approved by the board; or (ii) the department of higher education.

(3) Upon either: (i) a determination by the board that an institution may be at risk of imminent closure; or (ii) acceptance by the board of a determination made by an accrediting agency that an institution may be at risk of imminent closure, the board shall provide the institution with a summary of the basis for its determination. Upon receiving the summary, the institution shall immediately: (i) inform the board of any known liabilities, risks or financial issues; (ii) provide to the board any information necessary to accurately and fairly determine the

institution's financial status and likelihood of imminent closure and to monitor its condition; and

(iii) prepare a contingency plan for closure, which shall include a process for the institution or the board, or both, as determined by the board, to provide appropriate notification to relevant stakeholders, as determined by the board, including, but not limited to, enrolled students, candidates who have submitted applications, recent graduates, faculty, staff and host communities. The board shall establish requirements for contingency plans for closure that shall include, but not be limited to: (i) arrangements for students to complete their programs of study; (ii) a plan for the transfer and long-term maintenance of student records if the institution ceases to exist; (iii) information about the rights and responsibilities of student loan borrowers; (iv) information about the institution's financial condition, accreditation status and any outstanding compliance issues regarding federal and state student financial aid programs; and (v) a plan that assures the refund of deposits made by students in anticipation of enrolling or continuing their enrollment at the institution and for the cost of protecting and maintaining student records including, subject to criteria established by the board, a requirement that the institution furnish a bond with surety or a letter of credit sufficient to meet the costs of so refunding and maintaining.

An institution required to submit a contingency plan for closure shall also provide the board with access to all financial and other records upon request of the board.

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

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

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

(f) Each institution shall post on its website a copy of the institution's annual financial report or statement, required pursuant to section 8F of chapter 12 and a summary of the report, however termed, that is written in terms that are understandable by the general public.

(g) The board shall establish rules and regulations to implement and enforce this section.

SECTION 3. Section 1A of chapter 75 of the General Laws, as so appearing, is hereby amended by adding the following 2 paragraphs:-

Each elected or appointed member shall complete the comprehensive training program developed by the board of higher education pursuant to section 45 of chapter 15A.

Annually, the university shall post on its website a copy of the institution's financial report required pursuant to section 10 of chapter 75, however termed, and a summary of the report that is written in terms that are understandable by the general public.