

ASSEMBLY, No. 4409

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED JULY 16, 2020

Sponsored by:

Assemblywoman MILA M. JASEY

District 27 (Essex and Morris)

Assemblywoman JOANN DOWNEY

District 11 (Monmouth)

Assemblywoman VERLINA REYNOLDS-JACKSON

District 15 (Hunterdon and Mercer)

SYNOPSIS

Requires Secretary of Higher Education's approval for certain branch campuses; establishes fiscal monitoring and closure policies for independent institutions of higher education; modifies review process for new higher education academic programs.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 10/8/2020)

A4409 JASEY, DOWNEY

2

1 AN ACT concerning the Office of the Secretary of Higher Education
2 and amending and supplementing various sections of Title 18A
3 of the New Jersey Statutes.

4
5 **BE IT ENACTED** by the Senate and General Assembly of the State
6 of New Jersey:

7
8 1. Section 3 of P.L.1994, c.48 (C.18A:3B-3) is amended to
9 read as follows:

10 3. For the purposes of this act, unless the context clearly
11 requires a different meaning:

12 "Authority" means the Higher Education Student Assistance
13 Authority established pursuant to N.J.S.18A:71A-3;

14 "Commission" means the New Jersey Commission on Higher
15 Education established by this act;

16 "Council" means the New Jersey Presidents' Council established
17 by this act;

18 "Council of County Colleges" means the New Jersey Council of
19 County Colleges established pursuant to N.J.S.18A:64A-26;

20 "County college" means an educational institution established by
21 one or more counties, pursuant to chapter 64A of Title 18A of the
22 New Jersey Statutes;

23 "Educational research and services corporation" means a
24 nonprofit corporation whose voting members are public research
25 universities, State colleges, county colleges, public institutions of
26 higher education primarily located in the State of New Jersey, and
27 nonprofit independent institutions of higher education that receive
28 direct State aid;

29 "Independent institution" means an independent institution of
30 higher education in the State licensed by the Secretary of Higher
31 Education;

32 "Programmatic Mission" means all program offerings consistent
33 within those levels of academic degrees or certificates that the
34 institution has been authorized to grant by the State Board of
35 Higher Education prior to the effective date of this act or approved
36 thereafter by the commission;

37 "Public Research University" means Rutgers, The State
38 University of New Jersey, Rowan University, the New Jersey
39 Institute of Technology, and Montclair State University;

40 "Secretary" means "Secretary of Higher Education;"

41 "State college" means any of the State colleges or universities
42 established pursuant to chapter 64 of Title 18A of the New Jersey
43 Statutes including any State college designated as a teaching
44 university.

45 (cf: P.L.2017, c.178, s.36)

EXPLANATION – Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 2. Section 8 of P.L.1994, c.48 (C.18A:3B-8) is amended to
2 read as follows:

3 8. The council shall have the responsibility, consistent with
4 State and federal law, to:

5 a. provide public information and research on higher education
6 issues;

7 b. review and make recommendations to the **【commission】**
8 Secretary of Higher Education concerning proposals for new
9 programs that exceed the programmatic mission of an institution or
10 that change the programmatic mission of an institution;

11 c. review **【and comment on】** proposals for new programs **【that**
12 demand significant added resources or raise significant issues of
13 duplication but do not exceed the programmatic mission of the
14 institution or require a change in the programmatic mission **】** ,
15 according to standards established by the secretary through
16 regulations promulgated pursuant to the “Administrative Procedure
17 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), for the following:

18 (1) sufficient academic quality;

19 (2) sufficient evidence of labor market demand for the program;

20 (3) duplication with comparable programs of study in the State;

21 and

22 (4) whether the proposed new program will require significant
23 additional State resources .

24 If the council determines according to the review standards set by
25 the secretary **【deleted space underline】** that a proposed new
26 program **【is】** may be of insufficient academic quality, may lack
27 sufficient evidence of labor market demand, may be duplicative of
28 comparable programs of study or may be unduly expensive **【or**
29 unduly duplicative **】** to the State, the council shall refer that
30 proposal to the **【commission】** secretary for review**【;** however,
31 unless the commission disapproves of that program within 60 days
32 of its referral, the program shall be deemed approved **】** pursuant to
33 subsection f. of section 14 of P.L.1994, c.48 (C.18A:3B-14);

34 d. encourage the formation of regional or other alliances among
35 institutions including interinstitutional transfers, program
36 articulation, cooperative programs and shared resources and
37 develop criteria for "full faith and credit" transfer agreements
38 between county colleges and other institutions of higher education.
39 The council shall also keep institutions apprised of the
40 discontinuance of programs at other institutions and each president
41 shall notify the council of any such action;

42 e. advise and assist the **【commission】** secretary in developing
43 and updating a plan for higher education in the State including, but
44 not limited to, the establishment of new institutions, closure of
45 existing institutions and consolidation of institutions;

46 f. provide policy recommendations on Statewide higher
47 education issues;

- 1 g. recommend to the Governor, Legislature and [commission]
2 secretary on policy and overall levels of funding for student aid
3 programs necessary to ensure accessibility to higher education;
- 4 h. transmit to the Governor, Legislature and [commission]
5 secretary a general budget policy statement regarding overall State
6 funding levels;
- 7 i. upon referral from the [commission] secretary pursuant to
8 this act provide recommendations concerning institutional licensure
9 and university status;
- 10 j. appoint subcommittees consisting of the presidents of the
11 institutions of the various higher education sectors to decide
12 matters, within the authority of the council. The presidents of the
13 independent institutions shall develop a unified request for State
14 support under chapter 72B of Title 18A of the New Jersey Statutes.
15 The presidents of the county college sector shall develop a unified
16 request for State support under chapter 64A of Title 18A of the New
17 Jersey Statutes; and
- 18 k. consult with the Higher Education Student Assistance
19 Authority concerning student assistance matters.
20 (cf: P.L.1999, c.46, s.29)
21
- 22 3. Section 14 of P.L.1994, c.48 (C.18A:3B-14) is amended to
23 read as follows:
- 24 14. The Secretary of Higher Education shall be responsible for:
- 25 a. Statewide planning for higher education including research
26 on higher education issues and the development of a comprehensive
27 master plan, including, but not limited to, the establishment of new
28 institutions, closure of existing institutions, and consolidation of
29 institutions, which plan shall be long-range in nature. Within 180
30 days of the effective date of P.L.2015, c.91 and, at a minimum,
31 every seven years thereafter, the secretary shall adopt a new
32 comprehensive master plan. The council may request the secretary
33 to conduct a study of a particular issue. The secretary may require
34 from institutions of higher education such reports or other
35 information as may be necessary to enable the secretary to perform
36 his duties;
- 37 b. advocacy on behalf of higher education including informing
38 the public of the needs and accomplishments of higher education in
39 New Jersey;
- 40 c. making recommendations to the Governor and Legislature
41 on higher education initiatives and incentive programs of Statewide
42 significance;
- 43 d. final administrative decisions over institutional licensure and
44 university status giving due consideration to the accreditation status
45 of the institution. The secretary shall furnish the Presidents' Council
46 with any pertinent information compiled on behalf of the subject
47 institution and the council shall then make recommendations to the

- 1 secretary concerning the licensure of the institution or university
2 status within sixty days of receipt of the information;
- 3 e. adopting a code of ethics applicable to institutions of higher
4 education;
- 5 f. final administrative decisions over new academic programs
6 that go beyond the programmatic mission of the institution and final
7 administrative decisions over a change in the programmatic mission
8 of an institution. In addition, within 60 days of referral of a
9 proposed new program **【determined to be unduly expensive or
10 duplicative】** by the council, the secretary may deny approval of
11 programs proposed by public institutions of higher education which
12 do not exceed the programmatic mission of the institution, but
13 which **【are】** may be of insufficient academic quality, may lack
14 sufficient evidence of labor market demand, may be duplicative of
15 comparable programs of study, or may be unduly expensive to the
16 State as determined by the New Jersey Presidents' Council **【to be
17 unduly duplicative or expensive】** according to the review standards
18 set by the secretary, and review and comment on proposed new
19 programs submitted by independent institutions of higher education,
20 within 60 days of referral by the council;
- 21 g. reviewing requests for State support from the institutions in
22 relation to the mission of the institution and Statewide goals and
23 proposing a coordinated budget policy statement to the Governor
24 and Legislature;
- 25 h. communicating with the State Board of Education and
26 Commissioner of Education to advance public education at all
27 levels including articulation between the public schools and higher
28 education community;
- 29 i. applying for and accepting grants from the federal
30 government, or any agency thereof, or grants, gifts or other
31 contributions from any foundation, corporation, association or
32 individual, and complying with the terms, conditions and
33 limitations thereof, for the purpose of advancing higher education.
34 Any money so received may be expended by the secretary upon
35 warrant of the director of the Office of Management and Budget in
36 the Department of the Treasury on vouchers certified by the
37 secretary;
- 38 j. acting as the lead agent of communication with the federal
39 government concerning higher education issues, except that the
40 Higher Education Student Assistance Authority shall act, in
41 cooperation with the secretary, as the lead agency on issues of
42 student assistance;
- 43 k. exercising all of the powers and duties previously exercised
44 by the Board of Higher Education, the Department of Higher
45 Education, and the Chancellor of Higher Education, under the "New
46 Jersey Higher Education Building Construction Bond Act of 1971,"
47 P.L.1971, c.164, the "New Jersey Medical Education Facilities

1 Bond Act of 1977," P.L.1977, c.235, the "Jobs, Science and
2 Technology Bond Act of 1984," P.L.1984, c.99, the "Jobs,
3 Education and Competitiveness Bond Act of 1988," P.L.1988, c.78,
4 the "Higher Education Equipment Leasing Fund Act,"
5 P.L.1993, c.136, and the "Higher Education Facilities Trust Fund
6 Act," P.L.1993, c.375;

7 l. exercising any other power or responsibility necessary in
8 order to carry out the provisions of this act;

9 m. consulting with the Higher Education Student Assistance
10 Authority on student assistance matters;

11 n. advising and making recommendations for consideration to
12 the Governor and the governing board of a public research
13 university or a State college for members of that governing board
14 appointed by the Governor; and

15 o. examining and recommending to institutions of higher
16 education opportunities for joint purchasing and other joint
17 arrangements that would be advantageous to the institutions.

18 (cf: P.L.2015, c.91, s.1)

19

20 4. Section 15 of P.L.1994, c.48 (C.18A:3B-15) is amended to
21 read as follows:

22 15. The **【commission】** secretary shall adopt rules and
23 regulations, pursuant to the "Administrative Procedure Act,"
24 P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to carry out the
25 provisions of this act. **【Regulations adopted by the State Board of
26 Higher Education pertaining to:**

27 a. licensing of institutions and university status;

28 b. outside employment for employees of public institutions and
29 State agencies and Code of Ethics;

30 c. residency requirements for tuition purposes;

31 d. personnel policies which affect the terms and conditions of
32 employment including classification and compensation plans
33 adopted pursuant thereto;

34 e. tenure and multi-year contracts;

35 f. rights and procedures in a reduction in force;

36 g. student trustee policies; and

37 h. regulations concerning early retirement programs and length
38 of the academic year shall continue with full force and effect under
39 the authority of the commission for a period of one year from the
40 effective date of this act or until amended, continued or repealed by
41 the commission pursuant to law. **】**

42 (cf: P.L.1994, c.48, s.15)

43

44 5. Section 20 of P.L.2009, c.308 (C.18A:3B-65) is amended to
45 read as follows:

46 20. a. Subject to the approval of the Secretary of Higher
47 Education, the governing board of a public research university or a
48 State college may establish a branch campus. The governing board

1 shall submit the plan for the branch campus to the secretary for
2 review and approval. The plan shall be developed and reviewed
3 according to standards established by the secretary through
4 regulations promulgated pursuant to the “Administrative Procedure
5 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).

6 b. When the governing board [of a public research university or
7 a State college], after study and investigation, determines that it is
8 advisable for the institution to establish a branch campus or
9 additional location out-of-State or out-of-country that will serve at
10 least **[500]** 100 students of the institution, the board shall **[submit]**
11 include in the plan for the branch campus or additional location
12 submitted to the **[commission]** secretary **[for its review and**
13 **recommendations. The plan shall include]**:

14 (1) a description of the higher educational needs of the country
15 or region in which the branch campus or additional location shall be
16 located;

17 (2) a description of the proposed branch campus or additional
18 location and its proposed programs and curriculum; **[and]**

19 (3) an estimate of the cost of establishing and maintaining the
20 branch campus or additional location including the cost of any
21 planned acquisition or construction of facilities;

22 (4) a commitment that the branch campus or additional location
23 will comply with the provisions of P.L.1963, c.73 (C.47:1A-1 et
24 seq.), commonly known as the open public records act; and

25 (5) any other information or data deemed necessary by the
26 **[commission]** secretary.

27 **[b.] c.** In developing **[its]** a response to the plan, the
28 **[commission]** secretary shall consider whether there is a need for
29 the institution to acquire a branch campus or additional location and
30 whether the institution has the financial capacity to support the
31 campus or additional location.

32 d. The secretary may approve the establishment of an out-of-
33 State or out-of-country branch campus or additional location if the
34 secretary determines that the branch campus or additional location:

35 (1) serves a compelling State interest;

36 (2) does not impose excessive costs or reputational risk to the
37 State;

38 (3) does not impose a risk to the security interests of the State or
39 federal government; and

40 (4) does not conflict with existing State or federal laws or
41 regulations.

42 In making the determination, the secretary may utilize the
43 assistance of an external consultant team, solicit comments from
44 interested parties including faculty and members of professional
45 staff not holding faculty rank at the public research university or
46 State college, and conduct a site visit at the proposed site of the
47 branch campus or additional location.

1 e. The governing board of a public research university or a
2 State college shall fix the salary of all faculty and members of the
3 professional staff not holding faculty rank performing services at a
4 branch campus or additional location, and the faculty and members
5 shall be paid and provided benefits in the same manner as all other
6 employees of the public research university or State college
7 performing services on behalf of the public research university or
8 State college within the State.

9 f. The cost for consultants utilized by the secretary and other
10 out-of-pocket expenses incurred by the secretary for branch campus
11 and related reviews shall be paid by the institution seeking to
12 establish a branch campus.

13 g. The secretary shall adopt rules and regulations, pursuant to
14 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
15 seq.), necessary to carry out the provisions of this section.

16 h. As used in this section:

17 "Additional location" means a location, other than a branch
18 campus, that is geographically apart from the main campus and at
19 which the institution offers at least 50 percent of an educational
20 program.

21 "Branch campus" means a physical facility located at a place
22 other than the institution's principal campus offering one or more
23 complete programs leading to a degree.

24 (cf: P.L.2009, c.308, s.20)

25
26 6. N.J.S.18A:68-3 is amended to read as follows:

27 18A:68-3. a. No corporation shall furnish instruction or
28 learning in the arts, sciences, or professions for the purposes of
29 admitting any person to the grade of a degree, or shall confer or
30 participate in conferring a degree, giving to any person a diploma of
31 graduation or of proficiency in a course of study, in learning, or in
32 scientific arts or methods, within this State, until it shall have filed
33 a certified copy of its certificate of incorporation with the
34 **【Commission on】** Secretary of Higher Education and obtained from
35 the **【commission】** secretary a license to carry on the business under
36 such rules as the **【commission】** secretary may prescribe.

37 b. The secretary shall prepare a fee schedule to cover the
38 reasonable administrative costs associated with licensing
39 procedures and submit the initial fee schedule to the Legislature for
40 review. The secretary shall subsequently adopt, pursuant to the
41 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
42 seq.), the fee schedule. Fees collected shall be deposited in the
43 State Treasury.

44 c. The cost for consultants utilized by the **【Commission on】**
45 Secretary of Higher Education and other out-of-pocket expenses
46 incurred by the **【commission】** secretary for licensure and related

1 reviews shall be paid by the institution seeking a license or license
2 renewal.

3 (cf: P.L.1999, c.46, s.44)

4

5 7. (New section) a. An independent institution shall
6 immediately notify the secretary of any known financial liabilities
7 or risks that are reasonably likely to result in the imminent closure
8 of the institution or otherwise negatively affect the institution's
9 ability to fulfill its obligations to current and admitted students.

10 b. All independent institutions shall submit an annual fiscal
11 monitoring report to the secretary according to a schedule
12 established by the secretary and in a format developed by the
13 secretary.

14 c. The secretary shall establish a process to annually assess
15 each independent institution's financial information to identify
16 whether an institution is at risk of imminent closure. The
17 assessment shall be based on a review of information received
18 through the annual fiscal monitoring report. In addition to the
19 annual report, the secretary may also conduct additional
20 assessments at the secretary's discretion to identify whether an
21 institution is at risk of imminent closure.

22 d. If the secretary determines there is a risk of imminent
23 closure, the determination and a summary of the basis for the
24 determination shall be provided to the institution. Upon receipt of
25 the determination and summary the institution shall immediately:

26 (1) notify the secretary of any known liabilities, risks, or
27 financial issues;

28 (2) provide to the secretary any information necessary to
29 accurately and fairly determine the institution's financial status and
30 likelihood of imminent closure and to monitor its condition;

31 (3) prepare and submit to the secretary a contingency
32 plan for closure, which shall include:

33 i. a process to notify relevant stakeholders, as determined
34 by the secretary including, but not limited to, enrolled students,
35 candidates who have submitted applications, recent graduates,
36 faculty, staff, and host communities;

37 ii. arrangements for the continued education of currently
38 enrolled students via teach-out agreement or other practical
39 solution;

40 iii. a plan for the transfer to and long-term maintenance of
41 records, particularly student academic records, by a third-party if
42 the institution closes;

43 iv. information about the rights and responsibilities of
44 student loan borrowers;

45 v. information about the institution's financial condition,
46 accreditation status, and any outstanding compliance issues
47 regarding federal and State student aid programs; and

1 vi. confirmation that the institution has obtained either a
2 surety bond or letter of credit to refund student enrollment deposits
3 and for the cost to maintain student records by a third-party.

4 e. Upon a finding by the secretary that an institution has failed
5 to comply with the requirements of this section, the secretary shall
6 have the authority to order:

7 (1) a fine not to exceed \$1,000 per day of non-compliance with
8 the requirements of this section;

9 (2) the suspension of any State funding designated for the
10 institution; and

11 (3) the suspension or revocation of any degree-granting
12 authority previously conferred on the institution.

13 f. Any information submitted to, or developed by, the secretary
14 in furtherance of this section shall not be a public record and shall
15 be exempt from disclosure under provisions of P.L.1963, c.73
16 (C.47:1A-1 et seq.), commonly known as the open public records
17 act; and

18 g. The secretary shall adopt rules and regulations, pursuant to
19 the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
20 seq.), necessary to carry out the provisions of this section.

21
22 8. This act shall take effect immediately.
23
24

25 STATEMENT
26

27 Current law requires the New Jersey Presidents' Council to
28 review and comment on proposals for new programs that demand
29 significant added resources or raise significant issues of duplication
30 but do not exceed the programmatic mission of the institution or
31 require a change in the programmatic mission. The bill requires the
32 council to review proposals according to standards as set forth in
33 regulation by the Secretary of Higher Education for the following:

34 (1) sufficient academic quality;

35 (2) sufficient evidence of labor market demand for the program;

36 (3) duplication with comparable programs of study in the State;
37 and

38 (4) whether the proposed new program will require significant
39 additional State resources .

40 Under the bill, if the council determines according to the review
41 standards that a proposed new program may be of insufficient
42 academic quality, may lack sufficient evidence of labor market
43 demand, may be duplicative of comparable programs of study or
44 may be unduly expensive to the State, the council must refer that
45 proposal to the secretary for review.

46 Within 60 days of the referral from the council, the secretary,
47 using the same review standards, may deny approval of programs
48 proposed by public institutions which do not exceed the

1 programmatic mission of the institutions. In the case of
2 independent institutions, the secretary may review and comment on
3 proposed new programs submitted by those institutions. The
4 secretary would continue to have the authority to make final
5 administrative decisions over new academic programs that go
6 beyond the programmatic mission of the institution and final
7 administrative decisions over a change in the programmatic mission
8 of an institution.

9 The bill defines “independent institution” to mean an
10 independent institution of higher education in the State licensed by
11 the Secretary of Higher Education;

12 Current law provides that when the governing board of a public
13 research university or a State college determines that it is advisable
14 to establish a branch campus out-of-State or out-of-country that will
15 serve at least 500 students, the board must submit the plan to the
16 secretary for review and recommendations. The bill requires a
17 these institutions to receive approval from the secretary to establish
18 a branch campus or additional location that will serve at least 100
19 students out-of-State or out-of-country. The bill establishes criteria
20 for such approval and includes definitions of “branch campus” and
21 “additional location.” The bill also provides that a plan for the
22 establishment of an in-State branch campus is subject to the
23 secretary’s review and approval

24 The bill directs the secretary to prepare a fee schedule to cover
25 the reasonable administrative costs associated with licensing
26 procedures and submit the initial fee schedule to the Legislature for
27 review. Subsequent fee schedules will be established by the
28 secretary through regulations. Fees collected will be deposited in
29 the State Treasury.

30 The bill establishes a process for the secretary to monitor the
31 financial stability of independent institutions of higher education.
32 Under the bill, an independent institution must immediately notify
33 the secretary of any known financial liabilities or risks that are
34 reasonably likely to result in the imminent closure of the institution
35 or otherwise negatively affect the institution’s ability to fulfill its
36 obligations to current and admitted students. All independent
37 institutions must submit an annual fiscal monitoring report to the
38 secretary. The bill also requires the secretary to establish a process
39 to annually assess each independent institution’s financial
40 information to identify whether an institution is at risk of imminent
41 closure. The assessment must be based on a review of information
42 received through the annual fiscal monitoring report.

43 Under the bill, if the secretary determines there is a risk of
44 imminent closure, the determination and a summary of the basis for
45 the determination must be provided to the institution. Upon receipt
46 of the determination and summary, the institution must
47 immediately:

1 (1) notify the secretary of any known liabilities, risks or
2 financial issues;

3 (2) provide to the secretary any information necessary to
4 accurately and fairly determine the institution's financial status and
5 likelihood of imminent closure and to monitor its condition; and

6 (3) prepare and submit to the secretary a contingency plan
7 for closure.

8 The bill provides that, upon a finding by the secretary that an
9 independent institution has failed to comply with the bill's
10 requirements concerning fiscal monitoring, the secretary has the
11 authority to order:

12 (1) a fine not to exceed \$1,000 per day of non-compliance;

13 (2) the suspension of any state funding designated for the
14 institution; and

15 (3) the suspension or revocation of any degree granting
16 authority previously conferred on the institution.