Sponsored by:
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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)
AN ACT concerning the Office of the Secretary of Higher Education and amending and supplementing various sections of Title 18A of the New Jersey Statutes.

BE IT ENACTED by the Senate and General Assembly of the State of New Jersey:

1. Section 3 of P.L.1994, c.48 (C.18A:3B-3) is amended to read as follows:
   3. For the purposes of this act, unless the context clearly requires a different meaning:
      "Authority" means the Higher Education Student Assistance Authority established pursuant to N.J.S.18A:71A-3;
      "Commission" means the New Jersey Commission on Higher Education established by this act;
      "Council" means the New Jersey Presidents' Council established by this act;
      "Council of County Colleges" means the New Jersey Council of County Colleges established pursuant to N.J.S.18A:64A-26;
      "County college" means an educational institution established by one or more counties, pursuant to chapter 64A of Title 18A of the New Jersey Statutes;
      "Educational research and services corporation" means a nonprofit corporation whose voting members are public research universities, State colleges, county colleges, public institutions of higher education primarily located in the State of New Jersey, and nonprofit independent institutions of higher education that receive direct State aid;
      "Independent institution” means an independent institution of higher education in the State licensed by the Secretary of Higher Education;
      "Programmatic Mission” means all program offerings consistent within those levels of academic degrees or certificates that the institution has been authorized to grant by the State Board of Higher Education prior to the effective date of this act or approved thereafter by the commission;
      "Public Research University” means Rutgers, The State University of New Jersey, Rowan University, the New Jersey Institute of Technology, and Montclair State University;
      “Secretary” means “Secretary of Higher Education;
      "State college” means any of the State colleges or universities established pursuant to chapter 64 of Title 18A of the New Jersey Statutes including any State college designated as a teaching university.
   (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.
Section 8 of P.L.1994, c.48 (C.18A:3B-8) is amended to read as follows:

8. The council shall have the responsibility, consistent with State and federal law, to:
   a. provide public information and research on higher education issues;
   b. review and make recommendations to the Secretary of Higher Education concerning proposals for new programs that exceed the programmatic mission of an institution or that change the programmatic mission of an institution;
   c. review proposals for new programs that demand significant added resources or raise significant issues of duplication but do not exceed the programmatic mission of the institution or require a change in the programmatic mission, according to standards established by the secretary through regulations promulgated pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.), for the following:
      (1) sufficient academic quality;
      (2) sufficient evidence of labor market demand for the program;
      (3) duplication with comparable programs of study in the State;
      and
      (4) whether the proposed new program will require significant additional State resources.
   If the council determines according to the review standards set by the secretary that a proposed new program may be of insufficient academic quality, may lack sufficient evidence of labor market demand, may be duplicative of comparable programs of study or may be unduly expensive or unduly duplicative to the State, the council shall refer that proposal to the secretary for review; however, unless the commission disapproves of that program within 60 days of its referral, the program shall be deemed approved pursuant to subsection f. of section 14 of P.L.1994, c.48 (C.18A:3B-14);
   d. encourage the formation of regional or other alliances among institutions including interinstitutional transfers, program articulation, cooperative programs and shared resources and develop criteria for "full faith and credit" transfer agreements between county colleges and other institutions of higher education. The council shall also keep institutions apprised of the discontinuance of programs at other institutions and each president shall notify the council of any such action;
   e. advise and assist the secretary in developing and updating a plan for higher education in the State including, but not limited to, the establishment of new institutions, closure of existing institutions and consolidation of institutions;
   f. provide policy recommendations on Statewide higher education issues;
g. recommend to the Governor, Legislature and [commission] secretary on policy and overall levels of funding for student aid programs necessary to ensure accessibility to higher education;

h. transmit to the Governor, Legislature and [commission] secretary a general budget policy statement regarding overall State funding levels;

i. upon referral from the [commission] secretary pursuant to this act provide recommendations concerning institutional licensure and university status;

j. appoint subcommittees consisting of the presidents of the institutions of the various higher education sectors to decide matters, within the authority of the council. The presidents of the independent institutions shall develop a unified request for State support under chapter 72B of Title 18A of the New Jersey Statutes. The presidents of the county college sector shall develop a unified request for State support under chapter 64A of Title 18A of the New Jersey Statutes; and

k. consult with the Higher Education Student Assistance Authority concerning student assistance matters.

(cf: P.L.1999, c.46, s.29)

3. Section 14 of P.L.1994, c.48 (C.18A:3B-14) is amended to read as follows:

14. The Secretary of Higher Education shall be responsible for:

a. Statewide planning for higher education including research on higher education issues and the development of a comprehensive master plan, including, but not limited to, the establishment of new institutions, closure of existing institutions, and consolidation of institutions, which plan shall be long-range in nature. Within 180 days of the effective date of P.L.2015, c.91 and, at a minimum, every seven years thereafter, the secretary shall adopt a new comprehensive master plan. The council may request the secretary to conduct a study of a particular issue. The secretary may require from institutions of higher education such reports or other information as may be necessary to enable the secretary to perform his duties;

b. advocacy on behalf of higher education including informing the public of the needs and accomplishments of higher education in New Jersey;

c. making recommendations to the Governor and Legislature on higher education initiatives and incentive programs of Statewide significance;

d. final administrative decisions over institutional licensure and university status giving due consideration to the accreditation status of the institution. The secretary shall furnish the Presidents' Council with any pertinent information compiled on behalf of the subject institution and the council shall then make recommendations to the
secretary concerning the licensure of the institution or university
status within sixty days of receipt of the information;
e. adopting a code of ethics applicable to institutions of higher
education;
f. final administrative decisions over new academic programs
that go beyond the programmatic mission of the institution and final
administrative decisions over a change in the programmatic mission
of an institution. In addition, within 60 days of referral of a
proposed new program [determined to be unduly expensive or
duplicative] by the council, the secretary may deny approval of
programs proposed by public institutions of higher education which
do not exceed the programmatic mission of the institution, but
which [are] may be of insufficient academic quality, may lack
sufficient evidence of labor market demand, may be duplicative of
comparable programs of study, or may be unduly expensive to the
State as determined by the New Jersey Presidents' Council [to be
unduly duplicative or expensive] according to the review standards
set by the secretary, and review and comment on proposed new
programs submitted by independent institutions of higher education,
within 60 days of referral by the council;
g. reviewing requests for State support from the institutions in
relation to the mission of the institution and Statewide goals and
proposing a coordinated budget policy statement to the Governor
and Legislature;
h. communicating with the State Board of Education and
Commissioner of Education to advance public education at all
levels including articulation between the public schools and higher
education community;
i. applying for and accepting grants from the federal
government, or any agency thereof, or grants, gifts or other
contributions from any foundation, corporation, association or
individual, and complying with the terms, conditions and
limitations thereof, for the purpose of advancing higher education.
Any money so received may be expended by the secretary upon
warrant of the director of the Office of Management and Budget in
the Department of the Treasury on vouchers certified by the
secretary;
j. acting as the lead agent of communication with the federal
government concerning higher education issues, except that the
Higher Education Student Assistance Authority shall act, in
cooperation with the secretary, as the lead agency on issues of
student assistance;
k. exercising all of the powers and duties previously exercised
by the Board of Higher Education, the Department of Higher
Education, and the Chancellor of Higher Education, under the "New
P.L.1971, c.164, the "New Jersey Medical Education Facilities
Bond Act of 1977,” P.L.1977, c.235, the "Jobs, Science and  
Technology Bond Act of 1984,” P.L.1984, c.99, the "Jobs,  
Education and Competitiveness Bond Act of 1988," P.L.1988, c.78,  
the "Higher Education Equipment Leasing Fund Act,”  
Act,” P.L.1993, c.375;  
1. exercising any other power or responsibility necessary in  
order to carry out the provisions of this act;  
m. consulting with the Higher Education Student Assistance  
Authority on student assistance matters;  
n. advising and making recommendations for consideration to  
the Governor and the governing board of a public research  
university or a State college for members of that governing board  
appointed by the Governor; and  
o. examining and recommending to institutions of higher  
education opportunities for joint purchasing and other joint  
arrangements that would be advantageous to the institutions.  
(cf: P.L.2015, c.91, s.1)  
4. Section 15 of P.L.1994, c.48 (C.18A:3B-15) is amended to  
read as follows:  
15. The [commission] secretary shall adopt rules and  
regulations, pursuant to the "Administrative Procedure Act,"  
P.L.1968, c.410 (C.52:14B-1 et seq.), necessary to carry out the  
provisions of this act. [Regulations adopted by the State Board of  
Higher Education pertaining to:  
a. licensing of institutions and university status;  
b. outside employment for employees of public institutions and  
State agencies and Code of Ethics;  
c. residency requirements for tuition purposes;  
d. personnel policies which affect the terms and conditions of  
employment including classification and compensation plans  
adopted pursuant thereto;  
e. tenure and multi-year contracts;  
f. rights and procedures in a reduction in force;  
g. student trustee policies; and  
h. regulations concerning early retirement programs and length  
of the academic year shall continue with full force and effect under  
the authority of the commission for a period of one year from the  
effective date of this act or until amended, continued or repealed by  
the commission pursuant to law.]  
(cf: P.L.1994, c.48, s.15)  
5. Section 20 of P.L.2009, c.308 (C.18A:3B-65) is amended to  
read as follows:  
20. a. Subject to the approval of the Secretary of Higher  
Education, the governing board of a public research university or a  
State college may establish a branch campus. The governing board
shall submit the plan for the branch campus to the secretary for review and approval. The plan shall be developed and reviewed according to standards established by the secretary through regulations promulgated pursuant to the “Administrative Procedure Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).

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

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

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

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

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

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

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

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

(1) serves a compelling State interest;

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

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

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

In making the determination, the secretary may utilize the assistance of an external consultant team, solicit comments from interested parties including faculty and members of professional staff not holding faculty rank at the public research university or State college, and conduct a site visit at the proposed site of the branch campus or additional location.
e. The governing board of a public research university or a State college shall fix the salary of all faculty and members of the professional staff not holding faculty rank performing services at a branch campus or additional location, and the faculty and members shall be paid and provided benefits in the same manner as all other employees of the public research university or State college performing services on behalf of the public research university or State college within the State.

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

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

h. As used in this section:

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

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

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

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

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

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

c. The cost for consultants utilized by the [Commission on] Secretary of Higher Education and other out-of-pocket expenses incurred by the [commission] secretary for licensure and related
reviews shall be paid by the institution seeking a license or license renewal.

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

7. (New section) a. An independent institution shall immediately notify the secretary 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.

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

c. The secretary shall establish a process to annually assess each independent 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 the annual fiscal monitoring report. In addition to the annual report, the secretary may also conduct additional assessments at the secretary’s discretion to identify whether an institution is at risk of imminent closure.

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

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

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

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

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

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

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

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

v. information about the institution’s financial condition, accreditation status, and any outstanding compliance issues regarding federal and State student aid programs; and
vi. confirmation that the institution has obtained either a surety bond or letter of credit to refund student enrollment deposits and for the cost to maintain student records by a third-party.

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

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

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

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

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

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

8. This act shall take effect immediately.

STATEMENT

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

(1) sufficient academic quality;

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

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

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

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

Within 60 days of the referral from the council, the secretary, using the same review standards, may deny approval of programs proposed by public institutions which do not exceed the
programmatic mission of the institutions. In the case of independent institutions, the secretary may review and comment on proposed new programs submitted by those institutions. The secretary would continue to have the authority to make final administrative decisions over new academic programs that go beyond the programmatic mission of the institution and final administrative decisions over a change in the programmatic mission of an institution.

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

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

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

The bill establishes a process for the secretary to monitor the financial stability of independent institutions of higher education. Under the bill, an independent institution must immediately notify the secretary 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. All independent institutions must submit an annual fiscal monitoring report to the secretary. The bill also requires the secretary to establish a process to annually assess each independent institution’s financial information to identify whether an institution is at risk of imminent closure. The assessment must be based on a review of information received through the annual fiscal monitoring report.

Under the bill, if the secretary determines there is a risk of imminent closure, the determination and a summary of the basis for the determination must be provided to the institution. Upon receipt of the determination and summary, the institution must immediately:
(1) notify the secretary of any known liabilities, risks or financial issues;
(2) provide to the secretary any information necessary to accurately and fairly determine the institution’s financial status and likelihood of imminent closure and to monitor its condition; and
(3) prepare and submit to the secretary a contingency plan for closure.

The bill provides that, upon a finding by the secretary that an independent institution has failed to comply with the bill’s requirements concerning fiscal monitoring, the secretary has the authority to order:
(1) a fine not to exceed $1,000 per day of non-compliance;
(2) the suspension of any state funding designated for the institution; and
(3) the suspension or revocation of any degree granting authority previously conferred on the institution.