

HOUSE No. 4075

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, September 18, 2019.

The committee on Higher Education to whom were referred the message from His Excellency the Governor recommending legislation to support improved financial stability in higher education (Senate, No. 2183), the petition (accompanied by bill, Senate, No. 761) of Michael O. Moore, Jason M. Lewis, Brian W. Murray, James B. Eldridge and others for legislation relative to transparency in higher education, so much of the recommendations of the Inspector General (House, No. 7) as relates to higher education boards of trustees (House, No. 8), and the petition (accompanied by bill, House, No. 1217) of Kenneth I. Gordon and others for legislation to require the annual filing of fiscal health and stability reports by certain colleges and universities, reports recommending that the accompanying bill (House, No. 4075) ought to pass.

For the committee,

JEFFREY N. ROY.

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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 inserting after section
2 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 the university of
5 Massachusetts, the state universities, and the community colleges. The board shall provide
6 instruction and training to members on the proper governance of an institution of higher
7 education. The instruction and training shall include, without limitation, an overview of: (i) the
8 open meeting law established under sections 18 to 25, inclusive, of chapter 30A; (ii) the public
9 records law established under chapter 66; (iii) the conflict of interest law established under
10 chapters 268A and 268B; (iv) any state procurement laws; (v) state finance provisions
11 established under chapter 29; (vi) fraud prevention; and (vii) fiduciary responsibilities. The board
12 shall consult with the attorney general and the inspector general in developing instruction and
13 training programs under this section. The board shall establish any schedule it deems necessary
14 to ensure that all appointed or elected members of the boards of trustees of the university of

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

25 (b) All state universities and community colleges shall annually post on the
26 institution’s website a copy of the institution’s annual report of independent auditors, however
27 termed, together with a financial report summary written in terms that are understandable by the
28 general public.

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

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

34 “Accrediting agency”, an organization recognized by the United States Department of
35 Education to provide accreditation to an institution.

36 “Board”, the board of higher education established in section 4 of chapter 15A.

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

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

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

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

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

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

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

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

80 (c) Upon a finding by the board that an institution has failed to comply with the
81 requirements of this section, the board may impose a fine not to exceed \$1,000 per day, order the
82 suspension of any state funding designated for the institution, suspend or revoke any degree
83 granting authority previously conferred upon the institution, or impose other penalties the board
84 determines appropriate. A finding by the board that an institution has failed to comply with the
85 requirements of this section may be considered violations of Chapter 93A.

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

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

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

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

98 SECTION 3. Section 1A of chapter 75 of the General Laws, as appearing in the 2018
99 Official Edition, is hereby amended by inserting at the end thereof the following 2 paragraphs:-

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

102 The University of Massachusetts shall annually post on the institution's website a copy of
103 the institution's annual report of independent auditors, however termed, together with a financial
104 report summary written in terms that are understandable by the general public.