

CHAPTER 115

AN ACT supporting financial stability and operational accountability of public institutions of higher education and supplementing Title 18A of the New Jersey Statutes, and making an appropriation.

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

C.18A:3B-53.1 Definitions.

1. As used in this act:

“Financial instability” means a finding of instability on the financial condition of a public institution of higher education by the Secretary of Higher Education, upon consideration of a set of comprehensive financial responsibility metrics that may include, but shall not be limited to, the institution’s: Composite Financial Index score; debt to liquidity ratios; audit reports; days cash-on-hand; financial reserves; tuition reliance; debt covenant compliance; credit rating; debt capacity; and cost control for expenses and revenues.

“Public institution of higher education” means the State colleges or universities established pursuant to chapter 64 of Title 18A of the New Jersey Statutes, Rutgers, The State University, New Jersey Institute of Technology, Rowan University, Montclair State University, Kean University, all county colleges, and any other public university or college now or hereafter established or authorized by law.

C.18A:3B-53.2 Annual fiscal monitoring report, Secretary of Higher Education.

2. In addition to submitting the annual audit pursuant to section 6 of P.L.2009, c.308 (C.18A:3B-51), a public institution of higher education shall submit an annual fiscal monitoring report to the Office of the Secretary of Higher Education according to a schedule and in a format established by the secretary.

C.18A:3B-53.3 Comprehensive, fiscal, governance operations audit, Secretary of Higher Education, discretion.

3. a. Pursuant to a schedule established by the secretary, a public institution of higher education shall undergo a comprehensive audit. The secretary shall facilitate the audit which shall examine the institution’s fiscal and governance operations.

b. In addition to the scheduled comprehensive audit established by subsection a. of this section, the Secretary may direct a comprehensive audit of an institution’s fiscal and governance operations at any time if the secretary determines that conditions may exist within the institution that significantly or negatively impact an institution’s operations.

C.18A:3B-53.4 Secretary of Higher Education, State monitor, direct oversight, authority; conditions.

4. a. Notwithstanding any other provision of law to the contrary, the secretary shall have the authority to appoint a State monitor and additional staff as necessary, to provide direct oversight of a public institution of higher education’s fiscal and governance operations if the institution meets the following criteria:

(1) the fiscal monitoring report or comprehensive audit submitted pursuant to sections 2 and 3 of this act includes a finding of financial instability of the institution, as determined by the secretary;

(2) the institution receives an adverse or a disclaimer opinion by its independent auditor in the annual audit submitted pursuant to section 6 of P.L.2009, c.308 (C.18A:3B-51); or

(3) the institution meets any two of the following criteria:

(a) the institution ends the fiscal year with a deficit balance as calculated for budgetary purposes in the general fund, special revenue fund, or capital projects fund, with the exception of a capital projects fund deficit caused by the issuance of bond anticipation notes;

(b) the institution fails to develop and implement a plan acceptable to the secretary, or the secretary's designee, to address a deficit balance in the general fund, special revenue fund, or capital projects fund, with the exception of a capital projects fund deficit caused by the issuance of bond anticipation notes;

(c) the institution receives a qualified opinion by its annual auditor in the annual audit submitted pursuant to section 6 of P.L.2009, c.308 (C.18A:3B-51) or the fiscal monitoring report submitted pursuant to section 2 of this act;

(d) the institution receives an adverse, disclaimer, or qualified opinion by its independent auditor under the single audit section for State or federal awards in the annual audit submitted pursuant to section 6 of P.L.2009, c.308 (C.18A:3B-51) or the fiscal monitoring report submitted pursuant to section 2 of this act;

(e) the institution receives any audit findings by its independent auditor identified as material weaknesses in internal controls in the annual audit submitted pursuant to section 6 of P.L.2009, c.308 (C.18A:3B-51);

(f) the institution fails to implement a plan from the prior fiscal year which causes any findings from the independent auditor to be repeated;

(g) the institution fails to submit the annual audit required by section 6 of P.L.2009, c.308 (C.18A:3B-51) or the fiscal monitoring report required by section 2 of this act; or

(h) the institution fails to comply with the timely training of governing board members as required by section 17 of P.L.2009, c.308 (C.18A:3B-62) or any other State laws or regulations.

b. A State monitor appointed pursuant to subsection a. of this section shall be qualified by training and expertise necessary for the position and shall possess:

(1) a minimum of five years of appropriate experience in an executive-level management position; or

(2) a minimum of five years of appropriate experience and applicable credentials and certifications relating to financial management.

C.18A:3B-53.5 State monitor, duties, responsibilities, public institutions of higher education.

5. Notwithstanding any other provision of law to the contrary, a State monitor appointed pursuant to section 4 of this act shall:

a. oversee the fiscal management and expenditures of funds of the public institution of higher education including, but not limited to, budget reallocations and reductions, approvals of purchase orders, budget transfers, and payment of bills and claims;

b. oversee the operation and fiscal management of facilities, including developing and implementing recommendations for restructuring the institution offered by the governing board of a public institution of higher education;

c. ensure development and implementation of an acceptable plan to address the circumstances which resulted in the appointment of a State monitor pursuant to section 4 of this act that includes measurable benchmarks and specific activities to address the deficiencies of the institution;

d. oversee all staffing, including the ability to hire, promote, and terminate employees, as well as the ability to deny proposals by the administration of the institution to hire, promote, or terminate employees, except that all actions of the State monitor shall comply with the "New

Jersey Employer-Employee Relations Act,” established pursuant to P.L.1941, c.100 (C.34:13A-1 et seq.), and any collective bargaining agreements entered into by the institution;

e. have authority to override any action by the president of the institution or a vote by the governing board of the institution on any of the matters set forth in this section except that all actions of the State monitor shall comply with the “New Jersey Employer-Employee Relations Act,” established pursuant to P.L.1941, c.100 (C.34:13A-1 et seq.), and any collective bargaining agreements entered into by the institution;

f. attend all meetings of the governing board of the institution, including closed sessions;

g. meet with the governing board of the institution at least quarterly to provide governing board members with education and training that address the deficiencies and actions leading to the appointment of a State monitor pursuant to section 4 of this act;

h. make recommendations to the Legislature, including any proposed legislation which the monitor may desire to recommend for enactment, for the systemic improvement of the institution’s fiscal condition, and which may include opportunities for efficiencies through:

(1) mergers, acquisitions, and consolidations;

(2) program reductions;

(3) sales of surplus property;

(4) shared services and joint purchasing;

(5) staff reductions;

(6) teacher sharing agreements; and

(7) any other proposals that the monitor believes would improve the fiscal efficiency of the institution; and

i. report directly to the secretary or the secretary’s designee.

C.18A:3B-53.6 State monitor, designated State officer; fiscal accountability plan, progress reports, issuance; transition plan, develop; salary.

6. a. A State monitor appointed pursuant to section 4 of this act shall be considered a State officer for purposes of the “New Jersey Tort Claims Act,” established pursuant to P.L.1972, c.45 (C.59:1-1 et seq.).

b. (1) The State monitor, within six months of appointment to the position, shall issue a fiscal accountability plan to the institution and Secretary of Higher Education listing all benchmarks and remedial actions required to be completed by the institution and the necessary capacity and fiscal controls to be restored to the institution as a condition for the cessation of State monitor oversight. The State monitor may revise or amend the fiscal accountability plan, as appropriate.

(2) The State monitor shall issue progress reports to the governing board of the institution and the secretary on a monthly basis, or on a schedule determined by the secretary. The progress report shall detail the institution’s progress in meeting the requirements of the fiscal accountability plan, and establish clear and measurable benchmarks to assess the institution’s fiscal accountability.

(3) The secretary shall develop a transition plan outlining the process for the withdrawal of the State monitor and a return to full institution control. The State monitor shall provide oversight of the institution until the secretary determines that the transition plan has been successfully executed and the necessary capacity and fiscal accountability controls have been restored to institution operations.

c. The salary of a State monitor shall be fixed by the secretary and may be adjusted from time to time as the secretary deems appropriate. The State shall assume the total cost of the State monitor and any additional staff appointed pursuant to section 4 of this act.

C.18A:3B-53.7 Governing board, public institution of higher education, approve, chief financial officer appointment, reporting relationship.

7. The governing board of a public institution of higher education shall approve the appointment of a chief financial officer, who shall have a direct reporting relationship to the board and the president. The chief financial officer shall be responsible for those duties and responsibilities that are prescribed by the Secretary of Higher Education pursuant to section 8 of this act.

C.18A:3B-53.8 Chief financial officer, public institution of higher education, duties, responsibilities.

8. a. The Secretary of Higher Education shall establish the duties and responsibilities of a chief financial officer of a public institution of higher education, which shall include, but not be limited to:

- (1) acting as the lead agent on matters pertaining to financial reporting and planning, budget preparation, and management of investments and debts;
- (2) ensuring the short-term and long-term fiscal health of the institution;
- (3) providing oversight of the business practices of the institution;
- (4) aligning the institution's budget and strategic plans; and
- (5) reporting the financial condition of the institution to the secretary, and the governing board and president of the institution on a regular basis.

b. The secretary, in consultation with the State Comptroller and the Attorney General, shall prescribe terms and conditions, consistent with applicable State and federal law, upon which a chief financial officer may be held accountable for violations of the fiduciary duties of that position, including incompetence, or for any dishonest, deceptive, or fraudulent practice.

C.18A:3B-53.9 Chief financial officer, public institution of higher education, training program.

9. a. As a condition of appointment as a chief financial officer of a public institution of higher education pursuant to section 8 this act, the chief financial officer shall complete a training program developed by the Secretary of Higher Education that is designed to clarify the roles and duties of a chief financial officer of a public institution of higher education.

b. The training shall be completed no later than six months after the date the chief financial officer is appointed by an institution. A person who serves as the chief financial officer of a public institution of higher education prior to the effective date of this act shall complete the training within six months of the date the training is first made available by the secretary.

c. The secretary shall:

(1) prescribe the subject matter of the training which shall include, but not be limited to: the role of a chief financial officer at a public institution of higher education; a review of the types of financial, organizational, legal, and regulatory issues that a chief financial officer of a two-year or four-year public institution of higher education may be required to consider in the course of the chief financial officer's duties; the role of the chief financial officer in ensuring the fiscal stability of an institution; the responsibility of the chief financial officer to report on the financial condition of the institution to the secretary, the governing board, and president of the institution on a regular basis on as required pursuant to section 8 of this act; and changing trends and fiscal matters relating to the management of a public institution of higher education;

(2) arrange for an entity or entities to provide the training;

(3) conduct a periodic review of the prescribed subject matter of the training to ensure that the training includes relevant changes to State or federal law and other information deemed necessary to enable a chief financial officer to serve effectively; and

(4) develop the training program and make the training program available to chief financial officers of public institutions of higher education no later than 90 days after the effective date of this act.

d. Training pursuant to this section may, upon approval of the secretary, be made available online.

e. The institution shall certify completion of the training required pursuant to this section for a chief financial officer upon receipt of documentation thereof, as provided on a form and in a manner prescribed by the secretary.

f. The secretary shall provide notification to a chief financial officer who has failed to comply with the requirements of this section and provide the chief financial officer with a 30-day grace period to fulfill the outstanding training requirement. The secretary may provide additional extensions to the grace period. Notwithstanding any other provisions of law to the contrary, failure to fulfill the training requirement within the required period may, at the discretion of the secretary, constitute a resignation from the public institution of higher education and shall disqualify a chief financial officer from being appointed to any other public institution of higher education.

g. The secretary may, from time to time, make additional training courses or modules available to chief financial officers of public institutions of higher education.

C.18A:3B-53.10 State monitor, annual report to Governor, Legislature.

10. A State monitor appointed to an institution pursuant to section 4 of this act shall report annually to the Governor, and to the Legislature pursuant to section 2 of P.L.1991, c.164 (C.52:14-19.1), on the fiscal condition of the institution at which the monitor is providing oversight and an assessment of the institution's progress toward regaining full institution control.

11. There is annually appropriated from the General Fund to the Office of the Secretary of Higher Education the sum of \$100,000 to effectuate the purposes of section 9 of this act.

12. 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 act.

13. This act shall take effect immediately.

Approved July 20, 2023.