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ASSEMBLY, No. 4970

STATE OF NEW JERSEY

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Assemblyman Benson, Assemblywomen Chaparro, McKnight, Jimenez,
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Speight**

SYNOPSIS

Requires public institutions of higher education to submit annual fiscal monitoring report; authorizes Secretary of Higher Education to appoint State monitor of certain institutions; requires higher education chief financial officers complete training; annually appropriates \$100,000.

CURRENT VERSION OF TEXT

As reported by the Assembly Budget Committee on June 28, 2023, with amendments.

(Sponsorship Updated As Of: 6/30/2023)

1 AN ACT ²**[concerning the financial monitoring]** supporting financial
 2 stability and operational accountability² of public institutions of
 3 higher education and supplementing Title 18A of the New Jersey
 4 Statutes ², and making an appropriation².

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

8
 9 ²1. As used in this act:

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

19 “Public institution of higher education” means the State colleges
 20 or universities established pursuant to chapter 64 of Title 18A of the
 21 New Jersey Statutes, Rutgers, The State University, New Jersey
 22 Institute of Technology, Rowan University, Montclair State
 23 University, Kean University, all county colleges, and any other
 24 public university or college now or hereafter established or
 25 authorized by law.²

26
 27 ²**[1.] 2.**² In addition to submitting the annual audit pursuant to
 28 section 6 of P.L.2009, c.308 (C.18A:3B-51), a public institution of
 29 higher education shall submit an annual fiscal monitoring report to
 30 the Office of the Secretary of Higher Education according to a
 31 schedule and in a format established by the secretary.

32
 33 ²**[2.] 3.**² a. Pursuant to a schedule established by the
 34 secretary, a public institution of higher education shall undergo a
 35 comprehensive audit. ²**[‘The comprehensive audit shall not occur**
 36 more frequently than once every five fiscal years.¹²The secretary
 37 shall facilitate the audit which shall examine the institution’s fiscal
 38 and governance operations.

39 b. In addition to the scheduled comprehensive audit established
 40 by subsection a. of this section, the Secretary may direct a
 41 comprehensive audit of an ¹**[institutions]** institution’s¹ fiscal and
 42 governance operations at any time if the secretary determines that

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.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly AHI committee amendments adopted May 18, 2023.

²Assembly ABU committee amendments adopted June 28, 2023.

1 conditions may exist within the institution that significantly or
2 negatively impact an institution's operations.

3
4 ²**[3.] 4. a.**² Notwithstanding any other provision of law to the
5 contrary, the secretary shall have the authority to appoint a State
6 monitor and additional staff as necessary, to provide direct
7 oversight of a public institution of higher education's fiscal and
8 governance operations if the institution meets the following criteria:

9 ²**[a.] (1)**² the fiscal monitoring report or comprehensive audit
10 submitted pursuant to sections ²**[1 and]**² ²2 ²and 3² of this act
11 includes a finding of financial instability of the institution, as
12 determined by the secretary;

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

16 ²**[c.] (3)**² the institution meets any two of the following criteria:

17 ²**[(1)] (a)**² the institution ends the fiscal year with a deficit
18 balance as calculated for budgetary purposes in the general fund,
19 special revenue fund, or capital projects fund, with the exception of
20 a capital projects fund deficit caused by the issuance of bond
21 anticipation notes;

22 ²**[(2)] (b)**² the institution fails to develop and implement a plan
23 acceptable to the secretary, or the secretary's designee, to address a
24 deficit balance in the general fund, special revenue fund, or capital
25 projects fund, with the exception of a capital projects fund deficit
26 caused by the issuance of bond anticipation notes;

27 ²**[(3)] (c)**² the institution receives a qualified opinion by its
28 annual auditor in the annual audit submitted pursuant to section 6 of
29 P.L.2009, c.308 (C.18A:3B-51) or the fiscal monitoring report
30 submitted pursuant to section ²**[1]** ²2 of this act;

31 ²**[(4)] (d)**² the institution receives an adverse, disclaimer, or
32 qualified opinion by its independent auditor under the single audit
33 section for State or federal awards in the annual audit submitted
34 pursuant to section 6 of P.L.2009, c.308 (C.18A:3B-51) or the fiscal
35 monitoring report submitted pursuant to section ²**[1]** ²2 of this act;

36 ²**[(5)] (e)**² the institution receives any audit findings by its
37 independent auditor identified as material weaknesses in internal
38 controls in the annual audit submitted pursuant to section 6 of
39 P.L.2009, c.308 (C.18A:3B-51);

40 ²**[(6)] (f)**² the institution fails to implement a plan from the
41 prior fiscal year which causes any findings from the independent
42 auditor to be repeated;

43 ²**[(7)] (g)**² the institution fails to submit the annual audit
44 required by section 6 of P.L.2009, c.308 (C.18A:3B-51) or the
45 fiscal monitoring report required by section ²**[1]** ²2 of this act; or

1 ²[(8)] (h)² the institution fails to comply with the timely
2 training of governing board members as required by section 17 of
3 P.L.2009, c.308 (C.18A:3B-62) or any other State laws or
4 regulations.

5 ²b. A State monitor appointed pursuant to subsection a. of this
6 section shall be qualified by training and expertise necessary for the
7 position and shall possess:

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

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

13
14 ²[4.] 5.² Notwithstanding any other provision of law to the
15 contrary, a State monitor appointed pursuant to section ²[3] 4² of
16 this act shall:

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

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

25 c. ensure development and implementation of an acceptable plan
26 to address the circumstances which resulted in the appointment of a
27 State monitor pursuant to section ²[3] 4² of this act that includes
28 measurable benchmarks and specific activities to address the
29 deficiencies of the institution;

30 d. oversee all staffing, including the ability to hire, promote, and
31 terminate employees, as well as the ability to deny proposals by the
32 administration of the institution to hire, promote, or terminate
33 employees ², except that all actions of the State monitor shall
34 comply with the “New Jersey Employer-Employee Relations Act,”
35 established pursuant to P.L.1941, c.100 (C.34:13A-1 et seq.), and
36 any collective bargaining agreements entered into by the
37 institution²;

38 e. have authority to override any action by the president of the
39 institution or a vote by the governing board of the institution on any
40 of the matters set forth in this section except that all actions of the
41 State monitor shall comply with the “New Jersey Employer-
42 Employee Relations Act,” established pursuant to P.L.1941, c.100
43 (C.34:13A-1 et seq.), and any collective bargaining agreements
44 entered into by the ²[public]² institution ²[of higher education]²;

45 f. attend all meetings of the governing board of the institution,
46 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 ²~~3~~ ⁴ of this act; ²~~and~~²

h. ²make 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. ²report directly to the secretary or the secretary's designee.

²~~5~~ ⁶ ² a. A State monitor appointed pursuant to section ²~~3~~ 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.). ²~~For all other purposes the State monitor shall be considered an employee of the public institution of higher education.~~²

b. ²~~(1)~~² The State monitor ², within six months of appointment to the position,² shall ²~~provide oversight of the institution until the secretary determines that~~ ²issue a fiscal accountability plan to the institution and Secretary of Higher Education listing² all benchmarks and² remedial actions required² to be completed² by the institution ²~~have been implemented~~² and the necessary capacity and fiscal controls ²~~have been~~ ²to be² restored to the ²~~public institutions operations~~ ²institution 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

1 institution until the secretary determines that the transition plan has
2 been successfully executed and the necessary capacity and fiscal
3 accountability controls have been restored to institution operations².

4 c. The salary of a State monitor shall be fixed by the secretary
5 and may be adjusted from time to time as the secretary deems
6 appropriate. The ²~~institution~~ State² shall assume the total cost of
7 the State monitor and any additional staff appointed pursuant to
8 section ²~~3~~ 4² of this act. ²~~A State monitor shall have the~~
9 authority to appoint legal counsel if legal action is taken against the
10 State monitor while performing the official duties of a State monitor
11 or as needed upon approval of the secretary. ²

12
13 ²7. The governing board of a public institution of higher
14 education shall approve the appointment of a chief financial officer,
15 who shall have a direct reporting relationship to the board and the
16 president. The chief financial officer shall be responsible for those
17 duties and responsibilities that are prescribed by the Secretary of
18 Higher Education pursuant to section 8 of this act.²

19
20 ²8. a. The Secretary of Higher Education shall establish the
21 duties and responsibilities of a chief financial officer of a public
22 institution of higher education, which shall include, but not be
23 limited to:

24 (1) acting as the lead agent on matters pertaining to financial
25 reporting and planning, budget preparation, and management of
26 investments and debts;

27 (2) ensuring the short-term and long-term fiscal health of the
28 institution;

29 (3) providing oversight of the business practices of the
30 institution;

31 (4) aligning the institution's budget and strategic plans; and

32 (5) reporting the financial condition of the institution to the
33 secretary, and the governing board and president of the institution
34 on a regular basis.

35 b. The secretary, in consultation with the State Comptroller and
36 the Attorney General, shall prescribe terms and conditions,
37 consistent with applicable State and federal law, upon which a chief
38 financial officer may be held accountable for violations of the
39 fiduciary duties of that position, including incompetence, or for any
40 dishonest, deceptive, or fraudulent practice.²

41
42 ²9. a. As a condition of appointment as a chief financial officer
43 of a public institution of higher education pursuant to section 7 this
44 act, the chief financial officer shall complete a training program
45 developed by the Secretary of Higher Education that is designed to
46 clarify the roles and duties of a chief financial officer of a public
47 institution of higher education.

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

7 c. The secretary shall:

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

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

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

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

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

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

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

46 g. The secretary may, from time to time, make additional
47 training courses or modules available to chief financial officers of
48 public institutions of higher education.²

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

7
8 ²11. There is annually appropriated from the General Fund to
9 the Office of the Secretary of Higher Education the sum of
10 \$100,000 to effectuate the purposes of section 9 of this act.²

11
12 ²[6.] 12.² The secretary shall adopt rules and regulations,
13 pursuant to the "Administrative Procedure Act," P.L.1968, c.410
14 (C.52:14B-1 et seq.), necessary to carry out the provisions of this
15 act.

16
17 ²[7.] 13.² This act shall take effect immediately ¹[and shall first
18 apply to the first full academic year following enactment]¹.