

Massachusetts' Monitoring of Independent Higher Education Institutions' Financial Health

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Issue

Describe Massachusetts' legislation requiring state monitoring of the financial health of its independent (i.e., private) colleges and universities.

Summary

The Massachusetts Legislature passed [H.4099](#), *An Act to Support Improved Financial Stability in Higher Education*, which took effect November 14, 2019. Section 2 of the act imposes requirements on degree-granting private institutions that include annual financial screening by the state's higher education board, financial self-reporting to the board, training for governing board members, and public financial posting. (Sections 1 and 3 of the act impose financial training and reporting requirements on the state's public universities.)

Massachusetts Legislation

Annual Screening of Private Higher Education Institutions

This new law requires the Massachusetts Board of Higher Education ("the board") to establish an annual financial screening process of each private college's and university's financial information. The screening's purpose is to determine whether an institution is at risk of imminent closure, defined as closure within a time period the board determines. The financial screening must be conducted by either (1) the Massachusetts Department of Higher Education or (2) an accrediting agency that has a memorandum of understanding approved by the board.

Under the new law, if the board (either on its own or through an accrediting agency) determines that an institution may be at risk for imminent closure, then the board must give the institution a summary of the basis for this determination. After receiving the summary, the institution must immediately do the following:

1. tell the board about any known liabilities, risks, or financial issues;
2. give the board any information necessary to accurately and fairly determine its financial status and likelihood of imminent closure and to monitor its condition; and
3. prepare a closure contingency plan.

The closure contingency plan must include a process for the institution or the board, or both, to notify relevant stakeholders. The board determines the relevant stakeholders and the parties who must notify them. Under the law, “relevant stakeholders” may include enrolled and applicant students, recent graduates, faculty, staff, and host communities.

The board must also establish requirements for these contingency plans, which must include at least the following:

1. arrangements for students to complete their programs of study;
2. a plan for the transfer and long-term maintenance of student records;
3. information about student loan borrowers’ rights and responsibilities;
4. information about the institution’s financial condition, accreditation status, and any outstanding compliance issues relating to federal and state student financial aid programs; and
5. a plan to assure the refund of student attendance deposits and for the cost of protecting and maintaining student records, including the requirement that the institution get a surety bond or letter of credit to meet these costs.

The new law also requires institutions that must submit a contingency plan for closure to provide the board with access to all financial and other records the board requests.

Self-Reporting by Institutions

Additionally, the new law requires private colleges and universities to immediately notify the Massachusetts Board of Higher Education of any known financial liabilities or risks reasonably likely to (1) lead to the institution’s imminent closing or (2) harm its ability to fulfill its obligations to currently admitted students.

Public Records

The law specifies that any information submitted to or developed by the board for the above purposes (i.e., annual screening or self-reporting) is not a public record and is exempt from Massachusetts' freedom of information law.

Institutional Training

The new law requires each member of a private college or university governing body to receive training in the following topics at least every four years: higher education financial metrics, legal and fiduciary responsibilities, and applicable accreditation standards.

Public Financial Posting

Under the new law, each such institution must post a copy of its annual financial report or statement on its website. The report or statement must be written in terms understandable to the general public.

Penalties

If the board finds that an institution has failed to follow the above requirements, the law allows the board to (1) fine the institution up to \$1,000 per day, (2) suspend any state funding for the institution, (3) suspend or revoke any of the institution's degree-granting authority, (4) or impose other penalties it finds appropriate.

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