

1042

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sens. LAVALLE, PARKER, SAMPSON, VOLKER -- read twice and ordered printed, and when printed to be committed to the Committee on Higher Education

AN ACT to amend the education law, in relation to authorizing on-site inspections at degree-granting proprietary institutions and establishing an advisory council for degree-granting proprietary institutions; and to amend the state finance law, in relation to creating the degree-granting proprietary institution supervision account

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The education law is amended by adding a new section 6456
2 to read as follows:
3 S 6456. ON-SITE INSPECTIONS AT DEGREE-GRANTING PROPRIETARY INSTI-
4 TUTIONS. 1. THE COMMISSIONER SHALL CONDUCT INSPECTIONS AND EXAMINATIONS
5 OF DEGREE-GRANTING PROPRIETARY INSTITUTIONS PURSUANT TO THE PROVISIONS
6 OF THIS SECTION.
7 2. AS USED IN THIS SECTION, THE TERM "DEGREE-GRANTING PROPRIETARY
8 INSTITUTION" MEANS AN INSTITUTION THAT HAS BEEN AUTHORIZED BY THE BOARD
9 OF REGENTS TO ISSUE A COLLEGE DEGREE IN NEW YORK AND IS OPERATED ON A
10 FOR PROFIT BASIS.
11 3. THE COMMISSIONER SHALL EMPLOY A RISK ANALYSIS IN DETERMINING THE
12 NEED FOR ON-SITE INSPECTIONS AND REVIEWS OF DEGREE-GRANTING PROPRIETARY
13 INSTITUTIONS. THE RISK ANALYSIS SHALL ASSESS THE RISK THAT THE INSTITU-
14 TION IS OUT OF COMPLIANCE WITH LAW AND/OR OPERATING IN AN EDUCATIONALLY
15 UNSOUND MANNER THROUGH ANALYSIS OF THE FOLLOWING DATA: INFORMATION ON
16 STUDENT COMPLAINTS, STATE AND FEDERAL AUDITS OF AN INSTITUTION'S STUDENT
17 FINANCIAL AID, PERCENTAGE OF STUDENTS IN REMEDIAL/DEVELOPMENT CLASSES,
18 CHANGES IN ENROLLMENT PATTERNS, THE NUMBER OF STUDENTS ENROLLED AT THE
19 INSTITUTION WHO ARE ABLE TO BENEFIT FROM THE INSTRUCTION OFFERED BY THE
20 INSTITUTION, DATA ON PERSISTENCE AND GRADUATION RATES, AND ANY OTHER
21 DATA BEARING ON THE SCHOOL'S PERFORMANCE AS DETERMINED BY THE COMMIS-

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [] is old law to be omitted.

LBD05390-01-9

1 SIONER. IF THE DEPARTMENT DETERMINES THAT A DEGREE-GRANTING PROPRIETARY
2 INSTITUTION REQUIRES A SITE VISIT BASED ON THE RISK ANALYSIS, ALL COSTS
3 RELATED TO SUCH VISIT SHALL BE PAID BY THE INSTITUTION, TO THE DEPART-
4 MENT. THE COMMISSIONER SHALL ESTABLISH IN REGULATIONS A REASONABLE FEE
5 TO BE CHARGED FOR SUCH A SITE VISIT BASED ON THE COST OF SUCH VISIT TO
6 THE STATE. THE COMMISSIONER SHALL PROVIDE THE AFFECTED DEGREE-GRANTING
7 PROPRIETARY INSTITUTION REASONABLE PRIOR NOTICE BEFORE THE ON-SITE
8 VISIT.

9 4. A. IF THE DEPARTMENT DETERMINES THAT MULTIPLE SITE VISITS ARE
10 NECESSARY, THE DEPARTMENT SHALL IMPOSE, IN ACCORDANCE WITH REGULATIONS
11 OF THE COMMISSIONER, A PROGRESSIVE FEE TO ENSURE THAT INSTITUTIONS THAT
12 ARE OUT OF COMPLIANCE WITH THIS CHAPTER OR THE COMMISSIONER'S REGU-
13 LATIONS FOR EXTENDED PERIODS ARE ASSESSED THE ADDITIONAL COST TO THE
14 STATE FOR THE OVERSIGHT OF SUCH INSTITUTIONS.

15 B. IF THREE SITE VISITS OCCUR WITHIN A THREE-YEAR PERIOD AND THE
16 INSTITUTION HAS FAILED TO COME INTO SUBSTANTIAL COMPLIANCE WITH THE
17 APPLICABLE PROVISIONS OF THIS CHAPTER AND THE COMMISSIONER'S REGULATIONS
18 BY THE THIRD SITE VISIT, THE COMMISSIONER SHALL TAKE APPROPRIATE ACTION
19 TO DE-REGISTER ALL OF THE INSTITUTION'S REGISTERED PROGRAMS THAT ARE OUT
20 OF COMPLIANCE WITH LAW OR REGULATIONS AND MAY, IN HIS DISCRETION, TAKE
21 ACTION TO DE-REGISTER ALL OF THE INSTITUTION'S PROGRAMS. IN ADDITION,
22 WHEN THE COMMISSIONER BEGINS A PROCESS TO DE-REGISTER SUCH PROGRAMS OR
23 INSTITUTIONS, HE OR SHE SHALL NOTIFY THE PRESIDENT OF THE HIGHER EDUCA-
24 TION SERVICES CORPORATION IN WRITING OF THIS ACTION AND THE HIGHER
25 EDUCATION SERVICES CORPORATION SHALL NO LONGER AUTHORIZE FINANCIAL AID
26 TO PAY FOR NEW STUDENTS ADMITTED TO THE INSTITUTIONS.

27 5. NOTWITHSTANDING THE PROVISIONS OF SUBDIVISIONS THREE AND FOUR OF
28 THIS SECTION, THE DEPARTMENT MAY CONDUCT UNANNOUNCED VISITS OR EMPLOY
29 STUDENT OPERATIVES TO TEST FOR COMPLIANCE WITH APPLICABLE PROVISIONS OF
30 THIS CHAPTER AND THE COMMISSIONER'S REGULATIONS. THERE SHALL BE NO FEE
31 CHARGED FOR SUCH UNANNOUNCED VISITS UNLESS SUCH UNANNOUNCED VISIT
32 RESULTS IN FINDINGS THAT THE INSTITUTION IS OUT OF COMPLIANCE WITH
33 PREVIOUSLY IDENTIFIED VIOLATIONS.

34 6. A. ANY DEGREE-GRANTING PROPRIETARY INSTITUTION THAT VIOLATES ANY OF
35 THE PROVISIONS OF THIS CHAPTER OR THE COMMISSIONER'S REGULATIONS SHALL
36 BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS FOR
37 EACH SUCH VIOLATION AND AN ADDITIONAL PENALTY OF NOT MORE THAN ONE THOU-
38 SAND DOLLARS FOR EACH DAY DURING WHICH SUCH VIOLATION CONTINUES AFTER
39 WRITTEN NOTICE BY THE DEPARTMENT TO BE PAID AFTER AN OPPORTUNITY TO BE
40 HEARD BY THE DEPARTMENT OR BY A COURT OF COMPETENT JURISDICTION AND, IN
41 ADDITION, SUCH INSTITUTION MAY BY SIMILAR PROCESS BE ENJOINED FROM
42 CONTINUING SUCH VIOLATION OR VIOLATIONS. IN ADDITION, SUCH VIOLATIONS OF
43 THE INSTITUTION WHICH CONSTITUTE A CRIME SHALL RESULT IN A FINE EQUIV-
44 ALENT TO ALL MONEY RECEIVED FROM SUCH CRIME.

45 B. THE PENALTY PROVIDED FOR IN PARAGRAPH A OF THIS SUBDIVISION MAY BE
46 RECOVERABLE IN AN ACTION BROUGHT BY THE ATTORNEY GENERAL.

47 C. ANY FINES COLLECTED FOR VIOLATIONS OF THIS CHAPTER OR THE REGU-
48 LATIONS OF THE COMMISSIONER SHALL BE DEPOSITED IN THE DEGREE-GRANTING
49 PROPRIETARY INSTITUTION SUPERVISION ACCOUNT, IN ACCORDANCE WITH THE
50 PROVISIONS OF SECTION NINETY-SEVEN-II OF THE STATE FINANCE LAW.

51 7. IN THE EVENT THAT A DEGREE-GRANTING PROPRIETARY INSTITUTION OF
52 HIGHER EDUCATION IS PURCHASED OR IN ANY OTHER WAY OWNERSHIP IS TRANS-
53 FERRED, SUCH NEW ENTITY SHALL BE ON A ONE-YEAR PROBATIONARY PERIOD. THE
54 DEPARTMENT SHALL, WITHIN THIS FIRST YEAR, MAKE AT LEAST ONE ON-SITE
55 VISIT, DURING WHICH THEY SHALL AUDIT FINANCIAL STATEMENTS AND ALL OTHER
56 DOCUMENTS AS NECESSARY TO ENSURE THAT THE INSTITUTION IS MAINTAINING AND

1 IS CAPABLE OF SUSTAINING ALL ACADEMIC PROGRAMS AND STANDARDS CONSISTENT
2 WITH THIS CHAPTER AND THE COMMISSIONER'S REGULATIONS. THE DEPARTMENT
3 SHALL ESTABLISH A FEE FOR SUCH ON-SITE VISITS AND ANY SUBSEQUENT VISITS,
4 OR OTHER DEPARTMENTAL ACTIVITY RELATED TO THE ORIGINAL SITE VISIT THAT
5 IS NECESSARY TO ENSURE THAT SUCH INSTITUTIONS ARE PROVIDING ALL EDUCA-
6 TIONAL AND DEVELOPMENTAL SERVICES AS REQUIRED BY THIS CHAPTER AND THE
7 COMMISSIONER'S REGULATIONS. A FAILURE TO PAY SUCH FEES SHALL BE GROUNDS
8 FOR THE COMMISSIONER TO DE-REGISTER SUCH INSTITUTIONS.

9 8. A. AN ADVISORY COUNCIL FOR DEGREE-GRANTING PROPRIETARY INSTITUTIONS
10 IS HEREBY CREATED FOR THE PURPOSE OF ADVISING THE BOARD OF REGENTS AND
11 THE COMMISSIONER ON LEGISLATION, REGULATIONS, POLICY OR PRACTICES WHICH
12 THE COUNCIL DETERMINES ARE APPROPRIATE.

13 B. THE COUNCIL SHALL BE COMPOSED OF ELEVEN MEMBERS APPOINTED BY THE
14 GOVERNOR, TWO OF WHOM SHALL BE UPON THE RECOMMENDATION OF THE TEMPORARY
15 PRESIDENT OF THE SENATE, TWO OF WHOM SHALL BE UPON THE RECOMMENDATION OF
16 THE SPEAKER OF THE ASSEMBLY, ONE OF WHOM SHALL BE UPON THE RECOMMENDA-
17 TION OF THE MINORITY LEADER OF THE SENATE AND ONE OF WHOM SHALL BE UPON
18 THE RECOMMENDATION OF THE MINORITY LEADER OF THE ASSEMBLY. MEMBERS
19 SHALL SERVE AT THE PLEASURE OF THE GOVERNOR AND VACANCIES IN OFFICE
20 SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

21 C. OF THE FIVE REMAINING MEMBERS, ONE SHALL BE AN OWNER OR DIRECTOR OF
22 A SCHOOL REGULATED PURSUANT TO THIS ARTICLE, ONE SHALL BE A CURRENTLY
23 ENROLLED STUDENT AT THE TIME OF APPOINTMENT OR A GRADUATE OF SUCH A
24 SCHOOL WHO GRADUATED WITHIN THREE YEARS OF APPOINTMENT AND ONE SHALL BE
25 A STUDENT ADVOCATE. THE GOVERNOR SHALL DESIGNATE A CHAIRPERSON FROM SUCH
26 MEMBERS. THE COMMISSIONER, THE PRESIDENT OF THE HIGHER EDUCATION
27 SERVICES CORPORATION, THE CHAIR OF THE CONSUMER PROTECTION BOARD, THE
28 COMPTROLLER, AND THE DIRECTOR OF THE DIVISION OF THE BUDGET, OR THEIR
29 DESIGNEES, SHALL SERVE AS EX-OFFICIO, NON-VOTING MEMBERS OF THE COUNCIL.

30 D. THE COUNCIL SHALL MEET NO LESS THAN FOUR TIMES A YEAR. MEMBERS OF
31 THE COUNCIL SHALL RECEIVE NO COMPENSATION FOR THEIR SERVICES BUT SHALL
32 BE REIMBURSED FOR REASONABLE EXPENSES ACTUALLY AND NECESSARILY INCURRED
33 BY THEM IN THE PERFORMANCE OF THEIR DUTIES.

34 9. THE COMMISSIONER SHALL BE AUTHORIZED TO PROMULGATE ANY REGULATIONS
35 NECESSARY TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

36 S 2. The state finance law is amended by adding a new section 97-ii to
37 read as follows:

38 S 97-II. DEGREE-GRANTING PROPRIETARY INSTITUTION SUPERVISION ACCOUNT.

39 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMP-
40 TROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT OF THE
41 MISCELLANEOUS SPECIAL REVENUE FUND TO BE KNOWN AS THE DEGREE-GRANTING
42 PROPRIETARY INSTITUTION SUPERVISION ACCOUNT.

43 2. NOTWITHSTANDING ANY OTHER LAW, RULE OR REGULATIONS TO THE CONTRARY,
44 THE STATE COMPTROLLER IS HEREBY AUTHORIZED AND DIRECTED TO RECEIVE FOR
45 DEPOSIT TO THE CREDIT OF THE DEGREE-GRANTING PROPRIETARY INSTITUTION
46 SUPERVISION ACCOUNT ANY ASSESSMENTS OR FEES RECEIVED PURSUANT TO SECTION
47 SIXTY-FOUR HUNDRED FIFTY-SIX OF THE EDUCATION LAW AND ALL OTHER MONEYS
48 CREDITED OR TRANSFERRED TO SUCH ACCOUNT FROM ANY OTHER FUND OR SOURCE
49 PURSUANT TO LAW.

50 3. MONIES OF THE ACCOUNT, FOLLOWING APPROPRIATION BY THE LEGISLATURE,
51 SHALL BE AVAILABLE TO THE EDUCATION DEPARTMENT AND MAY BE EXPENDED FOR
52 SERVICES AND EXPENSES INCURRED IN SUPERVISING AND REGULATING
53 DEGREE-GRANTING PROPRIETARY INSTITUTIONS. MONIES SHALL BE PAID OUT OF
54 SUCH ACCOUNT ON THE AUDIT AND WARRANT OF THE STATE COMPTROLLER.

55 S 3. This act shall take effect immediately.