S T A T E O F N E W Y O R K

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2011-2012 Regular Sessions

I N S E N A T E

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Introduced by Sens. LAVALLE, BONACIC, LARKIN -- 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:

Section 1. The education law is amended by adding a new section 6456 to read as follows:

S 6456. ON-SITE INSPECTIONS AT DEGREE-GRANTING PROPRIETARY INSTITUTIONS. 1. THE COMMISSIONER SHALL CONDUCT INSPECTIONS AND EXAMINATIONS OF DEGREE-GRANTING PROPRIETARY INSTITUTIONS PURSUANT TO THE PROVISIONS OF THIS SECTION.

2. AS USED IN THIS SECTION, THE TERM "DEGREE-GRANTING PROPRIETARY INSTITUTION" MEANS AN INSTITUTION THAT HAS BEEN AUTHORIZED BY THE BOARD OF REGENTS TO ISSUE A COLLEGE DEGREE IN NEW YORK AND IS OPERATED ON A FOR PROFIT BASIS.

3. THE COMMISSIONER SHALL EMPLOY A RISK ANALYSIS IN DETERMINING THE NEED FOR ON-SITE INSPECTIONS AND REVIEWS OF DEGREE-GRANTING PROPRIETARY INSTITUTIONS. THE RISK ANALYSIS SHALL ASSESS THE RISK THAT THE INSTITUTION IS OUT OF COMPLIANCE WITH LAW AND/OR OPERATING IN AN EDUCATIONALLY UNSOUND MANNER THROUGH ANALYSIS OF THE FOLLOWING DATA: INFORMATION ON STUDENT COMPLAINTS, STATE AND FEDERAL AUDITS OF AN INSTITUTION'S STUDENT FINANCIAL AID, PERCENTAGE OF STUDENTS IN REMEDIAL/DEVELOPMENT CLASSES, CHANGES IN ENROLLMENT PATTERNS, THE NUMBER OF STUDENTS ENROLLED AT THE INSTITUTION WHO ARE ABLE TO BENEFIT FROM THE INSTRUCTION OFFERED BY THE INSTITUTION, DATA ON PERSISTENCE AND GRADUATION RATES, AND ANY OTHER 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.

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

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

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

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

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

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

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

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

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

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

B. THE COUNCIL SHALL BE COMPOSED OF ELEVEN MEMBERS APPOINTED BY THE GOVERNOR, TWO OF WHOM SHALL BE UPON THE RECOMMENDATION OF THE TEMPORARY PRESIDENT OF THE SENATE, TWO OF WHOM SHALL BE UPON THE RECOMMENDATION OF THE SPEAKER OF THE ASSEMBLY, ONE OF WHOM SHALL BE UPON THE RECOMMENDATION OF THE MINORITY LEADER OF THE SENATE AND ONE OF WHOM SHALL BE UPON THE RECOMMENDATION OF THE MINORITY LEADER OF THE ASSEMBLY. MEMBERS SHALL SERVE AT THE PLEASURE OF THE GOVERNOR AND VACANCIES IN OFFICE SHALL BE FILLED IN THE SAME MANNER AS THE ORIGINAL APPOINTMENT.

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

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

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

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

S 97-II. DEGREE-GRANTING PROPRIETARY INSTITUTION SUPERVISION ACCOUNT. 1. THERE IS HEREBY ESTABLISHED IN THE JOINT CUSTODY OF THE STATE COMPTROLLER AND THE COMMISSIONER OF TAXATION AND FINANCE AN ACCOUNT OF THE MISCELLANEOUS SPECIAL REVENUE FUND TO BE KNOWN AS THE DEGREE-GRANTING PROPRIETARY INSTITUTION SUPERVISION ACCOUNT.

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

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

S 3. This act shall take effect immediately.