

The House Committee on Higher Education offers the following substitute to HB 840:

A BILL TO BE ENTITLED
AN ACT

1 To amend Part 1A of Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia
2 Annotated, relating to nonpublic postsecondary educational institutions, so as to provide for
3 biennial review of institutions rather than programs; to provide for awards of costs and
4 reasonable attorney's fees in favor of the commission; to provide for alternative review of
5 renewal applications by institutions in good standing with recognized accrediting agencies;
6 to provide for filing a surety bond in the event of a change of ownership of an institution; to
7 provide for the remittal of surety bonds; to provide for assessment of investigation costs
8 incurred by the commission; to provide for a definition; to provide for related matters; to
9 provide for conforming changes; to repeal conflicting laws; and for other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 style="text-align:center">**SECTION 1.**

12 Part 1A of Article 7 of Chapter 3 of Title 20 of the Official Code of Georgia Annotated,
13 relating to nonpublic postsecondary educational institutions, is amended in Code Section
14 20-3-250.2, relating to definitions, by inserting a new paragraph to read as follows:

15 "(3.2) 'Branch facility' means any campus affiliated with an institution with a current
16 authorization to operate where instruction and administrative functions occur."

17 style="text-align:center">**SECTION 2.**

18 Said part is further amended in Code Section 20-3-250.5, relating to administration and
19 general powers and duties, by revising subsection (e) as follows:

20 "(e) The commission shall be authorized to provide for biennial review of a previously
21 authorized ~~program of instruction at any~~ institution which has received accreditation by a
22 ~~national or regional~~ an accrediting agency recognized by the United States Department of
23 Education. The commission shall promulgate guidelines which shall be followed by the
24 executive director in recommending such biennial ~~program~~ institutional reviews to the
25 commission."

26

SECTION 3.

27 Said part is further amended in Code Section 20-3-250.6, relating to minimum standards for
28 educational institutions, by revising subsection (c) as follows:

29 "(c) Institutions otherwise exempt from certain provisions of this part under paragraphs (7),
30 (10), (11), ~~(12)~~, and ~~(14)~~ (13) of subsection (a) of Code Section 20-3-250.3 shall be
31 required to meet the standards of financial soundness and being capable of fulfilling
32 commitments to students as provided in subparagraph (a)(1)(H) of this Code section, and,
33 because of such requirement, each such institution shall provide the commission with
34 audited financial statements as performed by an independent certified public accountant
35 and at such times as the commission shall require. The commission may impose a fee to
36 be paid by such institutions to offset the cost of receiving and reviewing such audited
37 financial statements. Institutions otherwise exempt from certain provisions of this part
38 under subsection (c) of Code Section 20-3-250.3 shall be required to submit annual
39 financial reports to the commission when applying for annual renewal of exemption or
40 authorization using the reporting format provided by the commission. In addition thereto,
41 institutions otherwise exempt from certain provisions of this part under paragraph (10) of
42 subsection (a) of Code Section 20-3-250.3 shall be subject to the requirements of Code
43 Sections 20-3-250.8, 20-3-250.10, and 20-3-250.27. The reports to the Governor and to
44 the General Assembly required by subsection (h) of Code Section 20-3-250.27 shall
45 include a summary of the commission's findings from its review of audited financial
46 statements required by this subsection."

47

SECTION 4.

48 Said part is further amended in Code Section 20-3-250.8, relating to application to operate
49 or conduct postsecondary activities, by revising subsection (g) as follows:

50 "(g) At least 60 days prior to the expiration of an authorization to operate, the institution
51 shall complete and file with the executive director an application form for renewal of its
52 authorization to operate. Such renewal application shall be reviewed and acted upon as
53 provided in subsections (c) through (f) of this Code section; provided, however, that
54 alternative methods deemed adequate and appropriate by the executive director may be
55 used to review renewal applications by nonpublic postsecondary educational institutions
56 that are accredited by and in good standing with an accrediting agency recognized by the
57 United States Department of Education."

SECTION 5.

58

59 Said part is further amended in Code Section 20-3-250.10, relating to surety bonds, filing,
 60 amount, release of surety, and suspension upon release of surety, by revising subsections (a)
 61 and (b) as follows:

62 "(a) At the time an initial application or application for a branch facility is made for
 63 authorization to operate or in the event of a change of ownership as provided for in
 64 subsection (f) of Code Section 20-3-250.8, the executive director shall require the
 65 nonpublic postsecondary educational institution making such application to file with the
 66 executive director a good and sufficient surety bond in such sum as determined by
 67 subsection (b) of this Code section. Such bond shall be executed by the applicant as
 68 principal and by a surety company qualified and authorized to do business in this state.
 69 The bond shall be conditioned to provide indemnification to the Tuition Guaranty Trust
 70 Fund established in Code Section 20-3-250.27 and to any student or enrollee or that
 71 person's parent or guardian or class thereof determined to have suffered loss or damage as
 72 a result of any act or practice which is a violation of this part or of rules and regulations
 73 promulgated pursuant thereto by such nonpublic postsecondary educational institution and
 74 that the bonding company shall pay any final, nonappealable judgment rendered by the
 75 commission or any court of this state having jurisdiction, upon receipt of written
 76 notification thereof. If a bond is in force at the time of an institutional closure, the surety
 77 shall be required to remit the full face value of the bond. Regardless of the number of years
 78 that such bond is in force, the aggregate liability of the surety thereon shall in no event
 79 exceed the penal sum of the bond. The bond may be continuous.

80 (b) The minimum amount of the bond required by subsection (a) of this Code section shall
 81 be based on the gross tuition of the nonpublic postsecondary educational institution during
 82 the previous year or on the estimated gross tuition for the current year, whichever is larger,
 83 and shall be as follows:

<u>Gross Tuition</u>	<u>Minimum Bond</u>
84 \$ 0.00 — \$ 50,000.00	\$ 20,000.00
85 50,001.00 — 100,000.00	30,000.00
86 100,001.00 — 200,000.00	50,000.00
87 200,001.00 — 300,000.00	75,000.00
88 300,001.00 — 400,000.00	100,000.00
89 400,001.00 — 500,000.00	150,000.00
90 500,001.00 and over <u>— 1,000,000.00</u>	200,000.00
91 <u>1,000,001.00 — 2,000,000.00</u>	<u>300,000.00</u>

93 2,000,001.00 and over 450,000.00

94 For situations where a nonpublic postsecondary educational institution is unable to secure
95 a bond amount provided for by this subsection, a bank standby letter of credit secured from
96 a federally insured financial institution shall be accepted pursuant to rules and regulations
97 of the commission. Institutions with \$1,000,001.01 or more in the previous year's gross
98 tuition or estimated gross tuition, whichever is larger, that are authorized and bonded prior
99 to July 1, 2020, shall not be subject to the \$300,000.00 or the \$450,000.00 bonding
100 requirement unless a change of ownership occurs after July 1, 2020."

101 **SECTION 6.**

102 Said part is further amended in Code Section 20-3-250.18, relating to initiation of court
103 proceedings by executive director, by adding two new subsections to read as follows:

104 "(c)(1) In any legal or administrative action brought against a responding party by or on
105 behalf of the commission in any court of competent jurisdiction to enforce the provisions
106 of this part, where the court determines the responding party acted without substantial
107 justification in not complying with the provisions of this part, the court shall, unless it
108 finds that special circumstances exist, assess in favor of the commission reasonable
109 attorney's fees and other litigation costs reasonably incurred.

110 (2) In any appeal hearing brought pursuant to Code Section 20-3-250.13 or 20-3-250.15
111 or paragraph (7) of subsection (g) of Code Section 20-3-250.27, where the court of
112 competent jurisdiction determines that the petitioning party acted without substantial
113 justification in pursuing such appeals hearing or in not complying with the provisions of
114 this part, the court shall, unless it finds that special circumstances exist, assess in favor
115 of the commission reasonable attorney's fees and other litigation costs reasonably
116 incurred.

117 (d) The executive director shall have the ability to assess investigation costs not to exceed
118 actual costs incurred by the commission against any person, agent, group, or entity found
119 to have violated any provision of this part."

120 **SECTION 7.**

121 All laws and parts of laws in conflict with this Act are repealed.