

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 211 Session of
2003

INTRODUCED BY ERICKSON, WAGNER, KUKOVICH, SCHWARTZ, LAVALLE,
CORMAN, EARLL, TARTAGLIONE, MOWERY, TOMLINSON, ORIE, COSTA,
ARMSTRONG, WOZNIAK, GREENLEAF, RAFFERTY, BOSCOLA, O'PAKE,
WONDERLING, RHOADES, KASUNIC AND FUMO, FEBRUARY 6, 2003

REFERRED TO EDUCATION, FEBRUARY 6, 2003

AN ACT

1 Amending the act of March 10, 1949 (P.L.30, No.14), entitled "An
2 act relating to the public school system, including certain
3 provisions applicable as well to private and parochial
4 schools; amending, revising, consolidating and changing the
5 laws relating thereto," further providing for community
6 college financial programs and reimbursements; establishing
7 the Community College Deferred Maintenance Fund; and
8 abrogating a regulation.

9 The General Assembly of the Commonwealth of Pennsylvania
10 hereby enacts as follows:

11 Section 1. Section 1902-A of the act of March 10, 1949
12 (P.L.30, No.14), known as the Public School Code of 1949, added
13 July 1, 1985 (P.L.103, No.31), is amended to read:

14 Section 1902-A. Powers and Duties of State Board of
15 Education.--(a) The State Board of Education shall have the
16 power, and its duty shall be:

17 (1) To adopt such policies, standards, rules and regulations
18 formulated by the Council of Higher Education, as may be
19 necessary to provide for the establishment, operation and
20 maintenance of community colleges, including minimum

1 requirements for physical facilities and equipment, curriculum,
2 faculty, standards and professional requirements, qualifications
3 for admission and advancement of students, student enrollment,
4 student population of the area to be served by the community
5 college, requirements for satisfactory completion of a two-year
6 program and the degrees or diplomas or certificates to be
7 awarded therefor, means of financing and financial resources for
8 the establishment and support of the community college, and all
9 matters necessary to effectuate the purposes of this act.

10 (2) To approve or disapprove plans for the establishment or
11 operation of a community college.

12 (3) To approve or disapprove petitions of school districts
13 or municipalities applying for participation in an established
14 community college. No petition may be approved unless it is
15 accompanied by the consent of the governing bodies of the
16 majority of the members of the local sponsor of the established
17 community college to the participation of the petitioning school
18 district or municipality.

19 (b) In determining such policies, standards, rules and
20 regulations, the State Board of Education may consider relevant
21 all minimum requirements established by statute or by regulation
22 with respect to the State colleges and universities of the
23 Commonwealth and may consider relevant such minimum requirements
24 established by statute or by regulation with respect to
25 secondary and special education programs in the school district
26 or districts of the area to be served by the community college.
27 Regulations promulgated under this article shall take effect at
28 the beginning of the school year following promulgation.

29 (c) In approving or disapproving such plans, the State Board
30 of Education shall consider the needs of areas adjacent to the

1 areas to be served by the community college and of the State
2 with respect to higher education and long range plans therefor
3 established by the State Board of Education. Other school
4 districts and municipalities may petition the State Board of
5 Education to become a part of a local sponsor as hereafter in
6 this act provided.

7 (d) No plan for the establishment of a community college
8 shall be approved unless the State Board of Education determines
9 that the local sponsor has a population of a sufficient number
10 to assure a sustained minimum enrollment, has sufficient wealth
11 to financially support such college and is not adequately served
12 by established institutions of higher learning. No plan for the
13 establishment of a community college shall be approved unless it
14 contains an estimate of operating cost for administration,
15 instruction, operation and maintenance and such other accounts
16 as the State Board of Education may, from time to time,
17 determine. No plan for the establishment of a community college
18 shall be approved unless it contains an estimate of any proposed
19 capital improvements for the next following ten years.

20 (e) To confer with and obtain the approval of the Governor's
21 Office as to the number of community colleges which can be
22 approved for participation during the ensuing fiscal period.

23 (f) Wherever in this act the approval of the State Board of
24 Education is required in any matter, the State Board of
25 Education may require the Department of Education to make and
26 report its findings and recommendations on such matter to the
27 Council of Higher Education for the formulation of policies,
28 standards, rules and regulations for consideration by the State
29 Board of Education.

30 Section 2. Section 1913-A of the act, amended or added July

1 1, 1985 (P.L.103, No.31), October 20, 1988 (P.L.827, No.110),
2 June 7, 1993 (P.L.49, No.16) and June 22, 2001 (P.L.530, No.35),
3 is amended to read:

4 Section 1913-A. Financial Program; Reimbursement of
5 Payments.--(a) The plan submitted by the local sponsor shall
6 set forth a financial program for the operation of the community
7 college. The plan shall provide that the local sponsor shall
8 appropriate or provide to the community college an amount at
9 least equal to the community college's annual operating costs
10 less the student tuition as determined in section 1908-A(a) less
11 the Commonwealth's payment as determined in subsection (b)(1) of
12 this section. The plan shall also provide that one-half of the
13 annual capital expenses shall be appropriated or provided by the
14 local sponsor to the community college. The local sponsor's
15 appropriation for annual operating costs and annual capital
16 expenses may in part be represented by real or personal property
17 or services made available to the community college. The plan
18 shall indicate whether the appropriation shall come from general
19 revenues, loan funds, special tax levies or from other sources,
20 including student tuitions.

21 (b) (1) The Commonwealth shall pay to a community college
22 on behalf of the sponsor on account of its operating costs
23 during the fiscal year from funds appropriated for that purpose
24 an amount equal to:

25 (i) for the 1993-1994 fiscal year through the 2000-2001
26 fiscal year, the lesser of such college's variable State share
27 ceiling as determined in clause (1.3) or such college's
28 equivalent full-time student reimbursement as determined in
29 clause (1.4); and

30 (ii) for the 2001-2002 fiscal year and each fiscal year

1 thereafter, the college's equivalent full-time student
2 reimbursement as determined in clause (1.4).

3 (1.2) The Secretary of Education, in consultation with the
4 community colleges, shall promulgate standards for credit
5 courses and for noncredit courses that will be eligible for
6 Commonwealth reimbursement. The standards shall specifically
7 exclude from eligibility for reimbursement any course or program
8 in avocational or recreational pursuits. The standards shall be
9 promulgated by the beginning of the 1994-1995 fiscal year. Until
10 such standards are promulgated, no community college will be
11 reimbursed for any credit course which was offered by such
12 college as a noncredit course during the college's 1992-1993
13 fiscal year.

14 (1.3) The variable State share ceiling of a community
15 college shall be determined as follows:

16 (i) Subtract the taxable income per person of the local
17 sponsor from the highest taxable income per person of any county
18 in the Commonwealth.

19 (ii) Divide the amount determined under subclause (i) by the
20 difference between the highest taxable income per person of any
21 county in the Commonwealth and the lowest taxable income per
22 person of any county in the Commonwealth.

23 (iii) Multiply the quotient determined under subclause (ii)
24 by one-sixth.

25 (iv) Add one-third to the product determined under paragraph
26 (iii).

27 (v) Multiply the sum determined under subclause (iv) by the
28 community college's operating costs in the year for which
29 reimbursement is being claimed.

30 (vi) The taxable income per person data used in the

preceding calculation shall be data certified to the Secretary of Education by the Secretary of Revenue under section 2501(9.1) for school district local sponsors or data otherwise published by the Secretary of Revenue for a municipal local sponsor.

(1.4) The equivalent full-time student reimbursement of a community college shall be the sum of credit course, noncredit course and stipend reimbursements. These reimbursements shall be calculated using a reimbursement factor of one thousand and forty dollars (\$1,040) for the 1993-1994 fiscal year, of one thousand eighty dollars (\$1,080) for the 1994-1995 fiscal year and of one thousand one hundred eighty dollars (\$1,180) for the 1995-1996 fiscal year and one thousand and two hundred and ten dollars (\$1,210) for the 1996-1997 fiscal year and one thousand two hundred sixty dollars (\$1,260) for the 1997-1998 fiscal year and the 1998-1999 fiscal year and one thousand three hundred dollars (\$1,300) for the 1999-2000 fiscal year and one thousand four hundred dollars (\$1,400) for the 2000-2001 fiscal year and one thousand five hundred dollars (\$1,500) for the 2001-2002 fiscal year and for each year thereafter and shall be determined as follows:

(i) Credit course reimbursement shall be calculated by multiplying the reimbursement factor by the number of equivalent full-time students enrolled in credit courses as determined by an audit to be made in a manner prescribed by the State Board of Education. The following apply:

(A) Course enrollment is to be determined by the standards of the community college.

(B) Computer-based documentation or paper-based documentation may be used to verify enrollment.

(C) Enrollment in a program of study is to be determined

1 solely by the declaration of the student.

2 (ii) Noncredit course reimbursement shall be calculated as
3 follows:

4 (A) [eighty] Eighty percent (80%) of the reimbursement
5 factor multiplied by the number of equivalent full-time students
6 enrolled in eligible noncredit courses for the 1993-1994 fiscal
7 year, as determined by the audit referred to in paragraph
8 (i)[;]_.

9 (B) [seventy] Seventy percent (70%) of the reimbursement
10 factor multiplied by the number of equivalent full-time students
11 enrolled in eligible noncredit courses for the 1994-1995 fiscal
12 year and for each year thereafter, as determined by the audit
13 referred to in paragraph (i)[; or]_.

14 (C) [one] One hundred percent (100%) of the reimbursement
15 factor multiplied by the number of equivalent full-time students
16 enrolled in eligible noncredit public safety courses that
17 provide training for volunteer firefighters and emergency
18 medical services for the 1995-1996 fiscal year and for each year
19 thereafter, as determined by the audit referred to in paragraph
20 (i).

21 (D) A noncredit course is eligible for reimbursement if all
22 of the following apply:

23 (I) The course is in the area of public safety; adult basic
24 education or adult literacy; occupational skills; academics; or
25 a program for certification in accordance with standards
26 established by statute, regulation or appropriate industry.

27 (II) Regardless of whether the instructor's compensation is
28 paid directly by the community college or paid by an entity that
29 contracts with the community college, the community college is
30 responsible for selecting; supervising; and, if appropriate,

1 dismissing the instructor.

2 (E) Course enrollment is to be determined by the standards
3 of the community college.

4 (iii) Stipend reimbursement on account of a community
5 college's operating costs for all equivalent full-time students
6 enrolled in the following categories of two-year or less than
7 two-year occupational or technical programs, shall be the sum of
8 the following:

9 (A) One thousand one hundred dollars (\$1,100) per full-time
10 equivalent student enrolled in advanced technology programs. For
11 the fiscal year 1995-1996, 1996-1997 and 1997-1998, the
12 reimbursement rate shall be calculated at one thousand one
13 hundred seventy-five dollars (\$1,175) per full-time equivalent
14 student enrolled in advanced technology programs. For the fiscal
15 year 1998-1999 and each year thereafter, the reimbursement rate
16 shall be calculated at one thousand four hundred sixty dollars
17 (\$1,460) per full-time equivalent student enrolled in advanced
18 technology programs. Advanced technology programs are programs
19 using new or advanced technologies which hold promise for
20 creating new job opportunities, including such fields as
21 robotics, biotechnology, specialized materials and engineering
22 and engineering-related programs.

23 (B) One thousand dollars (\$1,000) per full-time equivalent
24 student enrolled in programs designated as Statewide programs.
25 For the fiscal year 1995-1996, 1996-1997 and 1997-1998, the
26 reimbursement rate shall be calculated at one thousand seventy-
27 five dollars (\$1,075) per full-time equivalent student enrolled
28 in programs designated as Statewide programs. For the fiscal
29 year 1998-1999 and each year thereafter, the reimbursement rate
30 shall be calculated at one thousand three hundred sixty dollars

1 (\$1,360) per full-time equivalent student enrolled in programs
2 designated as Statewide programs. A Statewide program is a
3 program which meets one or more of the following criteria:

4 (I) Program enrollment from out-of-sponsor area is twenty
5 per cent or more of the enrollment for the program.

6 (II) A consortial arrangement exists with another community
7 college to cooperatively operate a program or share regions in
8 order to avoid unnecessary program duplication.

9 (C) Five hundred dollars (\$500) per full-time equivalent
10 student enrolled in other occupational or technical programs.
11 For the fiscal year 1995-1996, 1996-1997 and 1997-1998, the
12 reimbursement rate shall be calculated at five hundred seventy-
13 five dollars (\$575) per full-time equivalent student enrolled in
14 other occupational or technical programs. For the fiscal year
15 1998-1999 and each year thereafter, the reimbursement rate shall
16 be calculated at eight hundred sixty dollars (\$860) per full-
17 time equivalent student enrolled in other occupational or
18 technical programs.

19 (2) For the 1993-1994 fiscal year, each community college
20 shall be reimbursed under clause (1) in an amount which is at
21 least equal to a one percent (1%) increase over its 1992-1993
22 operating cost and stipend reimbursement. In no case shall a
23 community college's 1993-1994 reimbursement under clause (1) per
24 full-time equivalent student, insofar as said reimbursement does
25 not include a proportionate share attributable to stipend
26 reimbursement under clause (1.4)(iii), exceed its 1992-1993
27 operating cost reimbursement per full-time equivalent student by
28 more than ten percent (10%).

29 (2.1) For the 1994-1995 fiscal year, each community college
30 shall be reimbursed under clause (1) in an amount which is at

1 least equal to a one percent (1%) increase over its 1993-1994
2 reimbursement under clause (1). In no case shall a community
3 college's 1994-1995 reimbursement under clause (1) per full-time
4 equivalent student, insofar as said reimbursement does not
5 include the proportionate share attributable to stipend
6 reimbursement under clause (1.4)(iii), exceed its 1993-1994
7 reimbursement under clause (1) per full-time equivalent student,
8 insofar as said reimbursement does not include the proportionate
9 share attributable to stipend reimbursement under clause
10 (1.4)(iii) by more than ten percent (10%).

11 (2.2) For the 1995-1996 fiscal year, each community college
12 shall be reimbursed under clause (1) in an amount which is at
13 least equal to its 1994-1995 reimbursement under clause (1).

14 (3) The [Secretary] Department of Education [annually] shall
15 [establish] promulgate regulations establishing criteria to be
16 used to determine eligibility of programs for each of the above
17 stipend categories[,]. The department shall approve programs for
18 funding [in the following fiscal year] according to these
19 [criteria and] regulations. The Secretary of Education shall
20 submit to chairmen of the committees of education in the House
21 of Representatives and Senate a report setting forth [the
22 established criteria,] any programs approved for funding under
23 these [criteria] regulations and the recipient community
24 colleges.

25 (4) Each community college shall maintain such accounting
26 and student attendance records on generally accepted auditing
27 principles and standards [as will lend themselves to
28 satisfactory audit]. The department must complete an audit of a
29 community college for a school year within one year after the
30 completion of that school year. If the department does not meet

1 the time requirement of this clause, the community college
2 affected shall be required to forfeit reimbursement only for an
3 intentional violation or for a violation of previously cited and
4 resolved findings. The Commonwealth shall pay to a community
5 college on behalf of the sponsor on account of its capital
6 expenses an amount equal to one-half of such college's annual
7 capital expenses from funds appropriated for that purpose to the
8 extent that said capital expenses have been approved as herein
9 provided.

10 (5) For purposes of determining Commonwealth reimbursement
11 of operating costs, Federally funded expenditures for those
12 programs in which the Commonwealth participates in the cost
13 shall be deducted from total operating expenditures to determine
14 net reimbursable operating costs.

15 (c) Capital expenses shall mean only such expenses as are
16 incurred with the approval of the Department of Education for
17 amortization of the purchase of lands; purchase, construction or
18 improvement of buildings for administrative and instructional
19 purposes, including libraries; the lease of lands or buildings,
20 or for rentals to an authority for the same purpose; and for the
21 purchase, lease or rental of capital equipment and furniture
22 used for instructional or administrative purposes. Capital
23 expenses shall include library books and complementary audio-
24 visual equipment purchased during the first five years after
25 establishment. For the purpose of calculating the Commonwealth's
26 share of operating, and capital costs incurred prior to the
27 actual admission of students to a community college, all such
28 costs shall be interpreted as capital costs. No costs and
29 expenses incurred in the establishment, construction, operation
30 or maintenance of dormitories, or the equipment or furnishings

1 for such purposes, shall be included in capital expenses or
2 operating costs for purposes of Commonwealth reimbursement. The
3 provisions of this subsection shall not prevent the Commonwealth
4 from reimbursing a community college for capital expenses
5 incurred prior to the effective date of this act. Such
6 reimbursement must have approval of the Secretary of Education.

7 (d) The State Board of Education shall adopt policies,
8 standards, rules and regulations for determining reimbursable
9 capital expenses and operating costs, and the Department of
10 Education shall approve such expenses and costs for the purpose
11 of reimbursement by the Commonwealth.

12 (e) The State Board of Education shall apply for, receive
13 and administer, subject to any applicable regulations or laws of
14 the Federal Government or any agency thereof, any Federal
15 grants, appropriations, allocations and programs to fulfill the
16 purpose of this act.

17 (f) All administrative personnel, faculty, and other
18 employees of the community colleges in the Commonwealth shall be
19 eligible for inclusion in the Public School Employees'
20 Retirement System of Pennsylvania, the Pennsylvania State
21 Employees' Retirement System, or any independent retirement
22 program approved by the Board of Trustees of a community
23 college, and the Secretary of Education.

24 (g) The community college in the Commonwealth shall be
25 eligible for participation in the act of July 5, 1947 (P.L.1217,
26 No.498), known as the "State Public School Building Authority
27 Act," and the act of May 2, 1945 (P.L.382, No.164), known as the
28 "Municipality Authorities Act of 1945."

29 (h) In all cases where the board of trustees of any
30 community college fails to pay or provide for the payment of any

1 rental or rentals due the State Public School Building Authority
2 or any municipality authority for any period in accordance with
3 the terms of any lease entered into between the board of
4 trustees of any community college and the State Public School
5 Building Authority or any municipality authority, or fails to
6 pay or to provide for the payment of any other indebtedness when
7 due, upon written notice thereof from the State Public School
8 Building Authority or any municipality authority, or in such
9 cases where an audit reveals any unpaid indebtedness due, the
10 Secretary of Education shall notify the board of trustees of its
11 obligation and shall withhold out of any State appropriation
12 that may be due to such community college an amount equal to the
13 amount of rental or rentals owing by such board of trustees to
14 the State Public School Building Authority or any municipality
15 authority, or an amount equal to the amount of any other
16 indebtedness owing by such board of trustees, and shall pay over
17 the amount or amounts so withheld to the State Public School
18 Building Authority or any municipality authority or to
19 whomsoever any other indebtedness is due and owing.

20 (i) The amount payable to each community college Board of
21 Trustees on behalf of the sponsor shall be paid in the year in
22 which the costs and expenses are incurred in quarterly
23 installments and the Secretary of Education shall draw his
24 requisition quarterly upon the State Treasurer in favor of each
25 community college for the amount of reimbursement to which it is
26 entitled. Reimbursement or payment by the Commonwealth for the
27 operational expenses and capital equipment and the furnishings
28 shall be made on or before the end of the fiscal quarters ended
29 on September 30, December 31, March 31 and June 30 of each
30 Commonwealth fiscal year. Reimbursements or payments shall be

1 made semi-annually for the Commonwealth's share of the annual
2 rentals to an authority or the sponsor or sinking fund or debt-
3 service payments and other leases upon submission of a community
4 college requisition in the form required by the Commonwealth,
5 the reimbursement or payment to be made from funds appropriated
6 for that purpose. Money that is appropriated under this
7 subsection but not expended by a community college Board of
8 Trustees shall not be distributed to a local sponsor.

9 (j) In no event shall the payments or final reimbursement
10 made by the department following audit exceed the appropriation
11 available for community colleges.

12 (k) (1) Unless otherwise prescribed by the State Board of
13 Education, the Commonwealth's fiscal audits of community
14 colleges under this section shall be conducted in accordance
15 with "Government Auditing Standards," latest revision,
16 promulgated by the United States General Accounting Office.
17 Written audit reports will be produced and will be sent to the
18 community college by the Commissioner of Postsecondary/Higher
19 Education. Any cost disallowed under findings contained in the
20 audit report shall be considered an adjudication within the
21 meaning of 2 Pa.C.S. (relating to administrative law and
22 procedure) and regulations promulgated thereunder.

23 (2) The Secretary of Education is hereby specifically
24 authorized and shall be required to resolve audit findings
25 involving disallowed costs that are contested by community
26 colleges except for audit findings that involve mathematical
27 errors, violation of regulations or alleged illegal activities.
28 The proposed resolution of the Secretary of Education shall not
29 be subject to the provisions of 2 Pa.C.S. The Secretary of
30 Education's notice to resolve audit findings shall be sent to

1 the community college in writing. The Secretary of Education may
2 resolve the audit findings by reducing the disallowed costs
3 related thereto in whole or in part.

4 (3) The Secretary of Education's notice to resolve an audit
5 finding by reducing or eliminating the disallowed costs must be
6 made contingent upon the community college developing and
7 implementing a corrective action plan to address the audit
8 finding. The community college must submit a corrective action
9 plan to the Secretary of Education within 60 business days after
10 receipt of the Secretary of Education's written notice to
11 resolve the audit finding. The Secretary of Education shall
12 approve, reject or alter the plan submitted by the community
13 college within thirty (30) days of submission. After the
14 community college receives written notice of approval or agrees
15 in writing to the Secretary of Education's alterations of the
16 corrective action plan, said plan shall be implemented and shall
17 be binding on the community college. Implementation of the
18 approved or agreed upon corrective action plan will be verified
19 by an audit conducted by the department no later than the end of
20 the fiscal year following the fiscal year during which the plan
21 is implemented. If no agreed upon corrective action plan is in
22 place within one year after the date of the Secretary of
23 Education's written notice to resolve audit findings or if the
24 agreed upon corrective action has not been implemented within
25 one year after the date of the Secretary of Education's written
26 notice to resolve the audit findings, then the Secretary of
27 Education is authorized to adjust payments to the community
28 college to collect any amounts due based upon the findings
29 contained in the audit report that was issued to the college by
30 the commissioner.

1 (4) The department shall deduct any amounts due the
2 Commonwealth as a result of audit findings that are resolved
3 under this subsection from any future payment due to the
4 community college from the Commonwealth. The Secretary of
5 Education is authorized to approve a payment schedule in cases
6 where immediate repayment of the full amount due the
7 Commonwealth would jeopardize the ability of the community
8 college to continue operations.

9 (5) Resolution authority provided to the Secretary of
10 Education in this subsection shall be limited to disallowed cost
11 findings relating to policy and/or administrative practices. The
12 resolution authority shall not be used for audit findings in
13 which the audited community college data and documentation is in
14 error, where a violation of applicable law or regulation is
15 found or where criminal violations are suspected by the
16 Commonwealth auditors and brought to the Secretary of
17 Education's attention in writing. Notwithstanding the
18 limitations of this subsection, until June 30, 1995, the
19 Secretary of Education is authorized to resolve audit findings
20 involving disallowed costs for fiscal years prior to and
21 including 1992-1993 when such disallowed costs result from
22 violation of regulations.

23 (6) The department, through the Secretary of Education, is
24 authorized to issue guidelines for the operation of the
25 community college educational and financial programs. The
26 department shall amend these guidelines on an annual basis to
27 reflect the department's position on issues that require
28 resolution under this subsection.

29 (7) The provisions of subsection (d) are repealed insofar as
30 they are inconsistent with the provisions of this subsection.

(1) For the fiscal year 1992-1993, if insufficient funds are appropriated to make Commonwealth payments pursuant to this section, such payments shall be made on a pro rata basis.

Section 3. The act is amended by adding a section to read:

Section 1916-A. Community College Nonmandated Capital Fund.--(a) The Community College Deferred Maintenance Fund is established as a separate fund in the State Treasury.

(b) The sources of the fund are as follows:

(1) Reimbursements repaid by community colleges to the Commonwealth pursuant to audits under section 1913-A and regulations under that section.

(2) Appropriations.

(3) Earnings on money in the fund.

(c) The fund shall be used for deferred maintenance projects in community colleges. Guidelines for disbursement shall be developed by the Department of Education in consultation with community colleges.

(d) The money in the fund is continuously appropriated to the fund and shall not lapse at the end of any fiscal year.

Section 4. The following provisions of 22 Pa.Code are abrogated:

(1) 35.61(f)(2).

(2) 335.22(3).

Section 5. This act shall take effect in 60 days.