

HOUSE No. 03764

(House – [Enter text], 10/26/2011)



The Commonwealth of Massachusetts

IN THE YEAR TWO THOUSAND ELEVEN

October 26, 2011

To the Honorable Senate and House of Representatives:

I am filing for your consideration the attached proposal, entitled “An Act Relative to Strengthening Oversight of Education Collaboratives.”

Since the early 1970s, with passage of the state’s special education law, education collaboratives have enabled school districts to pool resources to provide improved services that school districts on their own likely could not provide. Today, thousands of Massachusetts students rely on these collaboratives, and in most instances they have served students and districts well. Unfortunately, earlier this year we learned of several alleged improprieties of a serious nature at the Merrimack Special Education Collaborative (MSEC). Consequently, the Board of Elementary and Secondary Education created a sub-committee to review education collaboratives and to propose recommendations to address the structural deficiencies that played a part in the MSEC controversy.

The bill that I am filing today incorporates those recommendations, and it will ensure sound fiscal management practices, strong oversight and continued excellent education services for

students in the Commonwealth. Education collaboratives can be a tremendous resource for school districts and students alike, but we need to ensure that they responsibly handle taxpayer funds and that, where they do not, the Commonwealth has the ability to hold them accountable. Accordingly, I urge your prompt and favorable consideration of this bill.

Respectfully submitted,

HOUSE No. 03764

The Commonwealth of Massachusetts

PRESENTED BY:

Deval Patrick

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

**AN ACT RELATIVE TO STRENGTHENING OVERSIGHT OF EDUCATION
COLLABORATIVES.**

PETITION OF:

NAME:

DISTRICT/ADDRESS:

HOUSE No. 03764

Message from His Excellency the Governor recommending legislation relative to strengthening oversight of education collaboratives. October 26, 2011.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

AN ACT RELATIVE TO STRENGTHENING OVERSIGHT OF EDUCATION COLLABORATIVES.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 4E of chapter 40 of the General Laws, as most recently amended by
2 section 2 of chapter 12 of the acts of 2010, is hereby amended by striking out the section in its
3 entirety and inserting in place thereof the following:-

4 Section 4E. (a) 2 or more school committees of cities, towns and regional school districts and
5 boards of trustees of charter schools may enter into a written agreement to conduct education
6 programs and services which shall complement and strengthen the school programs of member
7 school committees and charter schools and increase educational opportunities for students. The
8 school committees and boards of trustees of charter schools shall collaborate to offer the
9 programs and services; provided, however, the association of school committees and board of
10 trustees of charter schools which is formed to deliver the programs and services shall be known
11 as an education collaborative.

12 The education collaborative shall be managed by a board of directors which shall be comprised
13 of 1 person appointed by each member school committee or member charter board of trustees.
14 All appointed persons shall be either a school committee member, the superintendent of schools
15 or a member of the charter board of trustees. Members of the board of directors shall be entitled
16 to a vote according to the terms of the education collaborative agreement. The commissioner of
17 elementary and secondary education shall appoint an individual to serve as a voting member of
18 the education collaborative board of directors. No member of said board shall receive a salary or
19 a stipend for their service as a board member. No member of said board shall serve as a member
20 of a board of directors or as an officer or employee of any for-profit or non-profit entity that
21 conducts business with or is affiliated with the collaborative. Each collaborative board member
22 shall attend training developed by the department of elementary and secondary education. Each
23 collaborative board shall meet not fewer than 6 times annually.

24 The written agreement which shall form the basis of the education collaborative shall set forth
25 the purposes of the program or service, the financial terms and conditions of membership of the
26 education collaborative, the method of termination of the education collaborative and of the
27 withdrawal of member school committees and charter schools, the procedure for admitting new
28 members and for amending the collaborative agreement, the powers and duties of the board of
29 directors of the education collaborative to operate and manage the education collaborative and
30 any other matter not incompatible with law which the member committees and charter schools
31 consider advisable. The agreement, and all subsequent amendments, shall be subject to the
32 approval of the member school committees, member charter schools and the commissioner of
33 elementary and secondary education. The commissioner may suspend or revoke such approval
34 for cause.

35 Each board of directors of an education collaborative shall establish and manage a trust fund, to
36 be known as an Education Collaborative Trust Fund, and each such fund shall be designated by
37 an appropriate name. All monies contributed by the member municipalities and charter schools
38 and all grants or gifts from the federal government, state government, charitable foundations,
39 private corporations or any other source shall be paid to the board of directors of the education
40 collaborative and deposited in the fund.

41 The board of directors of the education collaborative shall appoint a treasurer who may be a
42 treasurer of a city, town or regional school district belonging to the collaborative. The treasurer
43 may, subject to the direction of the board of directors of the education collaborative, receive and
44 disburse all monies of the trust fund without further appropriation. The treasurer shall give bond
45 annually for the faithful performance of his duties as collaborative treasurer in a form approved
46 by the department of revenue and in a sum not less than the amount established by the
47 department, as shall be fixed by the board of directors of the education collaborative. The board
48 of directors of the education collaborative in its discretion may pay compensation to the treasurer
49 for his services. No member of the board of directors of the education collaborative shall be
50 eligible to serve as treasurer of the collaborative.

51 The treasurer of the education collaborative board of directors shall have the authority to make
52 appropriate investments of the monies of the Education Collaborative Trust Fund consistent with
53 section 54 of chapter 44.

54 (b) Each board of directors of an education collaborative shall keep an accurate account of all its
55 activities and all its receipts and expenditures and shall annually cause an independent audit to be
56 made of its accounts consistent with generally accepted governmental auditing standards. Such

57 audit and all management letters shall be filed annually on or before January 1 with the
58 department of elementary and secondary education and the state auditor and shall be in a form
59 prescribed by the state auditor; provided, however, that the purchase by a government unit of
60 social service programs, as defined in section 22N of chapter 7, from a collaborative, shall
61 require the collaborative to adhere to the uniform system of financial accounting, allocation,
62 reporting and auditing requirements of the bureau of purchased services of the operational
63 services division, in accordance with the requirements of section 22N of chapter 7. Copies of
64 such audits shall also be sent to each member school committee or member charter school and
65 shall be posted on the collaborative's website. The state auditor may investigate the budget and
66 finances of education collaboratives and their financial dealings, transactions and relationships,
67 and shall have the power to examine the records of education collaboratives and to prescribe
68 methods of accounting and the rendering of periodic reports.

69 The board of directors of an education collaborative may borrow money, enter into long-term or
70 short-term loan agreements or mortgages and apply for state, federal or corporate grants or
71 contracts to obtain funds necessary to carry out the purpose for which such collaborative is
72 established; provided, however, that the board of directors has determined that any borrowing,
73 loan or mortgage is cost-effective and in the best interest of the collaborative and its member
74 municipalities and charter schools. The borrowing, loans or mortgages shall be consistent with
75 the written agreement and articles of incorporation, if any, of the education collaborative and
76 shall be consistent with standard lending practices.

77 (c) The board of directors of the education collaborative may employ an executive officer who
78 shall serve under the general direction of the board and who shall be responsible for the care and
79 supervision of the education collaborative. Said executive officer shall not serve as a board

80 member, officer or employee of any for-profit or non-profit entity that conducts business with or
81 is affiliated with the collaborative.

82 The board of directors of the education collaborative shall be considered to be a public employer
83 and have the authority to employ personnel, including teachers, to carry out the purposes and
84 functions of the education collaborative. No person shall be eligible for employment by the
85 education collaborative in a position that is covered by section 38G of chapter 71 unless the
86 person has been granted a certificate by the commissioner of elementary and secondary
87 education under section 38G of chapter 71 or an approval under the regulations promulgated by
88 the board of elementary and secondary education under chapter 74 with respect to the type of
89 position for which he seeks employment; provided, however, that nothing herein shall be
90 construed to prevent a board of directors of an education collaborative from prescribing
91 additional qualifications. A board of directors of an education collaborative may, upon its
92 request, be exempted by the commissioner of elementary and secondary education for any 1
93 school year from the requirements of this section to employ certified or approved personnel
94 when compliance therewith would in the opinion of the commissioner constitute a great
95 hardship.

96 The education collaborative shall be considered to be a public entity and shall have standing to
97 sue and be sued to the same extent as a city, town or regional school district. An education
98 collaborative, acting through its board of directors, may, subject to chapter 30B, enter into
99 contracts for the purchase of supplies, materials and services and for the purchase or leasing of
100 land, buildings and equipment as considered necessary by the board of directors.

101 A school committee of a city, town or regional school district or board of trustees of a charter
102 school may authorize the prepayment of monies for an educational program or service of the
103 education collaborative to the treasurer of an education collaborative, and the city, town or
104 regional school district or charter school treasurer shall be required to approve and pay the
105 monies in accordance with the authorization of such school committee or charter school board of
106 trustees.

107 (d) Upon receipt of information by the commissioner of elementary and secondary education
108 regarding an education collaborative which, in the opinion of the commissioner, indicates the
109 presence of circumstances at the collaborative that impede its viability or demonstrate significant
110 malfeasance, financial or otherwise, by any board member or employee of such collaborative, the
111 commissioner may remove the offending board member or members, after a hearing. Upon
112 receipt of such information, the commissioner may also direct school districts and charter
113 schools to withhold payments of public funds to such collaborative, and the commissioner may,
114 in consultation with the secretary of administration and finance, withhold state funds being
115 directed to the collaborative. Any withholding of funds that occurs under this paragraph shall
116 conclude when the commissioner of elementary and secondary education acknowledges in
117 writing to the member school districts and member charter schools that sufficient corrective
118 actions are being taken by the collaborative to address the concerns that resulted in the
119 withholding of funds. If the commissioner removes a board member or members under this
120 paragraph, the commissioner shall develop a plan to ensure the continuity of the services of the
121 collaborative as appropriate.

122 (e) The board of elementary and secondary education shall have the authority to promulgate,
123 amend and rescind such reporting requirements, rules and regulations as may be necessary to
124 carry out the provisions of this section.

125 SECTION 2. Any education collaborative formed under section 4E of chapter 40 of the General
126 Laws before the enactment of this act shall revise its agreement to conform to the provisions of
127 this section, as amended by this act, within 18 months of its enactment.

128 SECTION 3. There shall be a commission to examine the future of education collaboratives.
129 The commission shall consist of 14 members: 1 of whom shall be the chair of the commission, to
130 be appointed by the governor; 2 of whom shall be the co-chairs of the joint committee on
131 education; 1 of whom shall be a member of the house of representatives appointed by the
132 minority leader; 1 of whom shall be a member of the senate appointed by the minority leader; 1
133 of whom shall be the secretary of education, or his designee; 1 of whom shall be the secretary of
134 health and human services, or her designee; 1 of whom shall be the commissioner of the
135 department of elementary and secondary education, or his designee; 6 of whom shall be
136 appointed by the secretary of education, 1 of whom shall be selected from a list of 3 nominees
137 offered by a representative of the Massachusetts Association of School Superintendents, 1 of
138 whom shall be selected from a list of 3 nominees offered by a representative of the
139 Massachusetts Association of School Committees, 1 of whom shall be selected from a list of 3
140 nominees offered by the Massachusetts Teachers Association, 1 of whom shall be selected from
141 a list of 3 nominees offered by the American Federation of Teachers of Massachusetts, 1 of
142 whom shall be selected from a list of 3 nominees offered by the Massachusetts Business Alliance
143 for Education, and 1 of whom shall be selected from a list of 3 nominees offered by the
144 Massachusetts Organization of Educational Collaboratives.

145 The commission shall examine and make recommendations on topics including, but not limited
146 to, the following: (1) developing efficient and effective strategies for creating a statewide
147 network of regional education service agencies to implement new programs and provide
148 technical assistance in partnership with the department of elementary and secondary education;
149 (2) identifying a funding stream to support regional activities; (3) maximizing the capacity of
150 collaboratives and aligning their respective missions with the commonwealth's educational goals
151 and priorities; (4) the relationship between education collaboratives and affiliated for-profit and
152 non-profit organizations, in consultation with the attorney general, the inspector general and the
153 state auditor; (5) reviewing the compensation levels of collaborative employees; (6) assessing the
154 merits of merging or consolidating existing collaboratives, including the effect on collective
155 bargaining agreements, staff, operational systems and debt obligations; (7) reviewing the
156 provision of adult services, in consultation with the executive office of health and human
157 services; and (8) adopting appropriate time frames for implementation.

158 The commission shall conduct its first meeting not less than 45 days after the date of enactment
159 of this act and shall issue a final report containing recommendations within 12 months of such
160 enactment. The commissioner of elementary and secondary education shall consider such
161 recommendations in implementing the provisions of this act. The commission shall report to the
162 general court the results of its study and its recommendations, if any, together with drafts of
163 legislation necessary to carry out such recommendations, by filing the same with the clerks of the
164 senate and house of representatives who shall forward the same to the chairs of the joint
165 committee on education and the chairs of the senate and house committees on ways and means.