

SENATE No. 02101

Senate, January 4, 2012 – New draft reported from the committee on Ways and Means for Senate, No. 2085.

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to improving accountability and oversight of education collaboratives.
Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to improve the accountability and oversight of education collaboratives, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

□

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. Chapter 40 of the General Laws is hereby amended by striking out section
2 4E, as appearing in the 2010 Official Edition, and inserting in place thereof the following
3 section:-

4 Section 4E. (a) As used in this section the following words shall, unless the context
5 clearly requires otherwise, have the following meanings:--

6 “Charter school”, commonwealth charter schools and Horace Mann charter schools
7 unless specifically stated otherwise.

8 “Charter school board”, the board of trustees of a charter school established under section
9 89 of chapter 71.

10 “Commissioner”, the commissioner of elementary and secondary education.

11 “Department”, the department of elementary and secondary education.

12 “District”, or "school district", the school department of a city, town, regional school
13 district, or county agricultural school.

14 “Related for-profit or non-profit organization”, a for-profit or non-profit organization
15 established under the laws of the commonwealth or any other state: (i) that, on average over a 3-
16 year period, receives more than 50 per cent of its funding from 1 or more education
17 collaboratives; or (ii) a primary purpose of which is to benefit or further the purposes of an
18 education collaborative and which engages in business transactions or business arrangements,
19 including pledges or assignments of collateral and loan guarantees or other contracts of
20 suretyship, with the education collaborative.

21 “Superintendent”, the superintendent of the district.

22 (b) Two or more school committees of cities, towns and regional school districts and
23 boards of trustees of charter schools may enter into a written agreement to provide shared
24 programs and services, including instructional, administrative, facility, community or any other
25 services; provided that a primary purpose of such programs and services shall be to complement
26 the educational programs of member school committees and charter schools in a cost-effective

27 manner. The association of school committees and charter school boards which is formed to
28 deliver the programs and services shall be known as an education collaborative.

29 (c) The education collaborative shall be managed by a board of directors which shall be
30 comprised of 1 person appointed annually by each member school committee or member charter
31 school board. All appointed persons shall be either a school committee member, the
32 superintendent of schools or a member of the charter board of trustees. The commissioner shall
33 appoint an individual to serve as a voting member of the education collaborative board of
34 directors; provided that, to the extent feasible, the commissioner shall appoint an individual who
35 has expertise in 1 or more of the following areas: educational programming and services,
36 finance, budgeting and management oversight. Each member of the board of directors shall be
37 entitled to a vote. No member of the board of directors shall receive an additional salary or
38 stipend for their service as a board member. No member of the board of directors of an education
39 collaborative shall serve as a member of a board of directors or as an officer or employee of any
40 related for-profit or non-profit organization. The board of directors shall elect a chairperson from
41 its members and provide for such other officers as it may determine are necessary, and may
42 establish advisory committees as desired. Each collaborative board shall meet not fewer than 6
43 times annually.

44 Each collaborative board member shall complete training on the roles and responsibilities
45 of the member's office within 30 days of the member's appointment. Said training shall include,
46 but not be limited to, a review of the open meeting law, public records law, conflict of interest
47 law, special education law, the budgetary process and the fiduciary and management oversight
48 responsibilities of board members. The department shall develop, and provide the training with

49 input from relevant stakeholders. The department shall promulgate regulations relative to the
50 certification of completion of said training.

51 The written agreement which shall form the basis of the education collaborative shall set
52 forth the following: (1) the mission, purpose and focus of the collaborative; (2) the program or
53 service to be offered by the collaborative; (3) the financial terms and conditions of membership
54 of the education collaborative, including a limit on the amount of cumulative surplus revenue
55 that may be held by the collaborative at the end of a fiscal year; (4) the detailed procedure for the
56 preparation and adoption of an annual budget; (5) the method of termination of the education
57 collaborative and of the withdrawal of member school committees and charter school boards; (6)
58 the procedure for admitting new members and for amending the collaborative agreement; (7) the
59 powers and duties of the board of directors of the education collaborative to operate and manage
60 the education collaborative; and (8) any other matter not incompatible with law which the
61 member school committees and charter school boards consider advisable. No agreement nor
62 subsequent amendments shall take effect unless approved by the member school committees and
63 member charter school boards and by the board of elementary and secondary education upon the
64 recommendation of the commissioner. A member school committee or member charter school
65 board shall not delegate the authority to approve amendments to the collaborative agreement to
66 any other person or entity. Each education collaborative, each member school committee or
67 member charter school board and the department shall maintain a copy of the collaborative
68 agreement, including any amendments to the agreement.

69 The board of directors of the education collaborative shall establish and manage a fund,
70 to be known as an education collaborative fund, and each such fund shall be designated by an
71 appropriate name. All monies contributed by the member municipalities and charter schools and

72 all grants or gifts from the federal government, state government, charitable foundations, private
73 corporations or any other source shall be paid to the board of directors of the education
74 collaborative and deposited in the fund.

75 The board of directors of the education collaborative shall appoint a treasurer who may be a
76 treasurer of a city, town or regional school district belonging to the collaborative. The treasurer
77 may, subject to the direction of the board of directors of the education collaborative, receive and
78 disburse all money belonging to the collaborative without further appropriation. The treasurer
79 shall give bond annually for the faithful performance of duties as collaborative treasurer in a
80 form approved by the department of revenue and in a sum not less than the amount established
81 by the department, as shall be fixed by the board of directors of the education collaborative. The
82 board of directors of the education collaborative may pay reasonable compensation to the
83 treasurer for services rendered. No member of the board of directors or employee of the
84 education collaborative shall be eligible to serve as treasurer of the collaborative.

85 The treasurer of the education collaborative board of directors may make appropriate
86 investments of the money of the collaborative consistent with section 55B of chapter 44. A
87 business manager or employee of the education collaborative with responsibilities similar to
88 those of a town accountant shall be subject to section 52 of chapter 41 and shall not be eligible to
89 hold the office of treasurer of the collaborative.

90 The board of directors of an education collaborative may borrow money, enter into long-
91 term or short-term loan agreements or mortgages and apply for state, federal or corporate grants
92 or contracts to obtain funds necessary to carry out the purpose for which such collaborative is
93 established; provided, however, that the board of directors has determined that any borrowing,

94 loan or mortgage is cost-effective and in the best interest of the collaborative and its member
95 municipalities and charter schools. The borrowing, loans or mortgages shall be consistent with
96 the written agreement and articles of incorporation of the education collaborative and shall be
97 consistent with standard lending practices. The board of directors of an education collaborative
98 shall notify each member school committee and charter school board within 30 calendar days of
99 applying for real estate mortgages.

100 (d) Each education collaborative shall adopt and maintain a financial accounting system,
101 in accordance with generally accepted accounting principles as prescribed by the governmental
102 accounting standards board and any supplemental requirements prescribed jointly by the
103 commissioner of elementary and secondary education and the commissioner of revenue, in
104 consultation with the state auditor. Each collaborative shall maintain books of original entry,
105 general and subsidiary ledgers, related accounting records, and as appropriate, memorandum
106 records, work sheets, supporting cost allocations and computations, payroll and expenditure
107 warrants, written contracts, staff logs, appointment books, evidence of teaching credentials or
108 approval by programs, teaching schedules, canceled checks and paid invoices. The department,
109 the state auditor and the department of revenue may review or audit any part of an education
110 collaborative's records to ascertain whether the student, personnel and financial data reported by
111 a collaborative are accurate, to ensure that the collaborative is complying with the applicable
112 laws and regulations and to determine whether the collaborative is maintaining effective controls
113 over revenues, expenditures, assets and liabilities. The department may enter into an
114 interdepartmental service agreement with the operational services division to assist in reviewing
115 collaborative finances.

116 Each board of directors of an education collaborative shall annually prepare financial
117 statements, including: (1) a statement of net assets; (2) a statement of revenues, expenditures and
118 changes in net assets; and (3) such supplemental statements and schedules as may be required by
119 regulation. Each board of directors of an education collaborative shall annually cause an
120 independent audit to be made of its financial statements consistent with generally accepted
121 governmental auditing standards and shall discuss and vote to accept the audit report at an open
122 meeting of the board. Each board of directors shall file such audit report and any related
123 management letters annually on or before October 1 for the previous fiscal year with the
124 department and the state auditor, and shall transmit a copy of such audit report and any related
125 management letters to each member school committee and charter school board. The purchase by
126 a government unit of social service programs, as defined in section 22N of chapter 7, from a
127 collaborative, shall also require the collaborative to adhere to the uniform system of financial
128 accounting, allocation, reporting and auditing requirements of the bureau of purchased services
129 of the operational services division, in accordance with the requirements of said section 22N of
130 said chapter 7.

131 The audited financial statements, accompanying notes and supplemental schedules shall
132 disclose: (1) transactions between the education collaborative and any related for-profit or non-
133 profit organization; (2) transactions or contracts related to the purchase, sale, rental or lease of
134 real property; (3) the names, duties and total compensation of the 5 most highly compensated
135 employees; (4) the amounts expended on administration and overhead; (5) any accounts held by
136 the collaborative that may be spent at the discretion of another person or entity; (6) the amounts
137 expended on services for individuals age 22 and older; and (7) any other items as may be
138 required by regulation.

139 The department shall also be responsible for making information from the audits publicly
140 available online, in a searchable format; provided, however, that the department may designate
141 the state agency with whom the department enters into an interdepartmental service agreement as
142 the party responsible for making such information publicly available online.

143 (e) Each education collaborative shall submit an annual report, not later than October 1
144 for the previous fiscal year, to the commissioner, to each member school committee and to each
145 member charter school board. The annual report shall be in such form as may be prescribed by
146 the board of elementary and secondary education and shall include, but not be limited to: (1)
147 information on the programs and services provided by the education collaborative, including
148 discussion of the cost-effectiveness of such programs and services and progress made towards
149 achieving the objectives and purposes set forth in the collaborative agreement; and (2) audited
150 financial statements and the independent auditor's report, as described in subsection (d). Each
151 education collaborative shall publish such annual report on its internet website and shall provide
152 a printed hard copy of the most recent annual report to members of the public upon request.

153 (f) The board of directors of the education collaborative may employ an executive officer
154 who shall serve under the general direction of the board and who shall be responsible for the care
155 and supervision of the education collaborative. Said executive officer shall not serve as a board
156 member, officer or employee of any related for-profit or non-profit organization.

157 The board of directors of the education collaborative shall be considered to be a public
158 employer and may employ personnel, including teachers, to carry out the purposes and functions
159 of the education collaborative. No person shall be eligible for employment by the education
160 collaborative in a position that is covered by section 38G of chapter 71 unless the person has

161 been granted a certificate by the commissioner under section 38G of chapter 71 or an approval
162 under the regulations promulgated by the board of elementary and secondary education under
163 chapter 74 with respect to the type of position for which the person seeks employment; provided,
164 however, that nothing in this subsection shall be construed to prevent a board of directors of an
165 education collaborative from prescribing additional qualifications. A board of directors of an
166 education collaborative may, upon its request, be exempted by the commissioner for any 1
167 school year from the requirements of this section to employ certified or approved personnel
168 when compliance with this subsection would in the opinion of the commissioner constitute a
169 great hardship. No employee of an education collaborative shall be employed at any related for-
170 profit or non-profit organization.

171 (g) The trustee, trustees or governing board of any related for-profit or non-profit
172 organization shall file a copy of the annual written report for the preceding fiscal year as required
173 under section 8F of chapter 12, including all attachments and schedules, with the commissioner
174 within 10 days of filing said report with the attorney general; provided that any related for-profit
175 or non-profit organization not required to submit a complete audited financial statement under
176 section 8F of chapter 12 shall file a copy of said statement with the commissioner by October 1
177 for the preceding fiscal year. The audited financial statement shall be prepared and examined by
178 an independent certified public accountant in accordance with generally accepted auditing
179 standards for the purpose of expressing an opinion on the audited financial statement.

180 (h) The education collaborative shall be considered to be a public entity and shall have
181 standing to sue and be sued to the same extent as a city, town or regional school district. An
182 education collaborative, acting through its board of directors, may, subject to chapter 30B, enter

183 into contracts for the purchase of supplies, materials and services and for the purchase or leasing
184 of land, buildings and equipment as considered necessary by the board of directors.

185 A school committee of a city, town or regional school district or charter school board
186 may authorize the prepayment of monies for an educational program or service of the education
187 collaborative to the treasurer of an education collaborative, and the city, town or regional school
188 district or charter school treasurer shall be required to approve and pay the monies in accordance
189 with the authorization of such school committee or charter school board.

190 (i) Each education collaborative shall establish and maintain an internet website that
191 allows the public at no cost to search for and obtain: (1) a list of the members of the board of
192 directors of the education collaborative; (2) copies of the minutes of open meetings held by the
193 board of directors, which shall be posted within 30 days after the board has approved such
194 minutes; (3) a copy of the written agreement and any subsequent amendments to the agreement;
195 and (4) a copy of the annual report required under subsection (e).

196 (j) The department shall annually furnish a supplemental report on the Massachusetts
197 Comprehensive Assessment System performance results of students served by each education
198 collaborative.

199 (k) The department shall, at least once every 6 years, review and evaluate the programs
200 and services provided by each education collaborative. Such review shall, at a minimum, assess
201 compliance with the written agreement and any conditions imposed by the board of elementary
202 and secondary education, and with the requirements of this section and any other applicable state
203 and federal laws and regulations.

204 (l) Upon receipt of information regarding an education collaborative which, in the
205 opinion of the commissioner, indicates the presence of circumstances at the collaborative that
206 impede its viability or demonstrate deficiencies in programmatic quality or significant
207 malfeasance, financial or otherwise, by any board member or employee of the collaborative, the
208 commissioner may place such collaborative on probationary status to allow the implementation
209 of a remedial plan. If such plan is unsuccessful, the commissioner may direct school districts and
210 charter schools to withhold payments of public funds to the collaborative, and may, in
211 consultation with the secretary of administration and finance, withhold state funds being directed
212 to the collaborative; provided further that the board of elementary and secondary education may
213 suspend or revoke for cause the written agreement of an education collaborative upon the
214 recommendation of the commissioner. Any withholding of funds that occurs under this
215 paragraph shall conclude when the commissioner finds and communicates in writing to the
216 member school committees and member charter school boards that sufficient corrective actions
217 are being taken by the collaborative to address the concerns that resulted in the withholding of
218 funds.

219 (m) The board of elementary and secondary education shall promulgate, amend and
220 rescind rules and regulations as may be necessary to carry out this section. At a minimum, the
221 board shall promulgate regulations which prescribe (1) requirements and standards for the
222 amount of cumulative surplus revenue that may be held by an education collaborative at the end
223 of a fiscal year and (2) requirements and guidelines for administrative proceedings conducted
224 under subsection (l).

225 SECTION 2. The department of elementary and secondary education shall develop a
226 model collaborative agreement that addresses the requirements and standards for approval within

227 6 months of the effective date of this act. The model agreement, which may be used by existing
228 or future education collaboratives formed under section 4E of chapter 40 of the General Laws,
229 shall be made available on the department's website.

230 SECTION 3. Any education collaborative formed under section 4E of chapter 40 of the
231 General Laws prior to the effective date of this act shall revise its agreement to conform to said
232 section 4E, as amended by this act, and shall resubmit such revised agreement to member school
233 committees, member charter school boards of trustees and the board of elementary and
234 secondary education for approval within 12 months of the effective date of this act.

235 SECTION 4. An education collaborative formed under section 4E of chapter 40 of the
236 General Laws shall not provide services to individuals over the age of 22 unless the commission
237 established under section 5 of this act has issued a determination otherwise; provided, however,
238 that an education collaborative providing services to individuals over the age of 22 prior to the
239 effective date of this act may continue the provision of such services.

240 SECTION 5. There shall be a special commission to study the role of education
241 collaboratives. The commission shall consist of 10 members: the house and senate chairs of the
242 joint committee on education, or designees, who shall serve as co-chairs of the commission; the
243 secretary of education, or designee; the commissioner, or designee; the secretary of health and
244 human services, or designee; a representative of the Federation for Children with Special Needs;
245 a representative of Massachusetts Administrators of Special Education; and 3 persons to be
246 appointed by the secretary of education, 1 of whom shall be selected from a list of 3 persons
247 nominated by the Massachusetts Association of School Superintendents, 1 of whom shall be
248 selected from a list of 3 persons nominated by the Massachusetts Association of School

249 Committees, and 1 of whom shall be selected from a list of 3 persons nominated by the
250 Massachusetts Organization of Education Collaboratives.

251 The commission shall examine, report and make recommendations on topics including,
252 but not limited to: (1) whether a statewide network of education collaboratives should be
253 established to implement new programs and provide technical assistance in partnership with the
254 department of elementary and secondary education, and if so, how such network should be
255 organized and funded; (2) whether education collaboratives are appropriate settings for providing
256 programs and services to developmentally disabled adults over the age of 22, and if so, what
257 measures should be taken to ensure proper accounting of and funding for all services provided by
258 education collaboratives and related for-profit and non-profit organizations, as that term is
259 defined in section 4E of chapter 40 of the General Laws, for individuals not enrolled in or
260 employed by elementary or secondary schools in the commonwealth; (3) how to maximize the
261 efficiency and capacity of existing education collaboratives; (4) the appropriate role and
262 relationship, if any, between education collaboratives and related for-profit and non-profit
263 organizations; (5) appropriate compensation levels and authority of collaborative management
264 employees; (6) the merits of merging or consolidating existing collaboratives, including the
265 effect on collective bargaining agreements, staff, operational systems, and debt obligations, and
266 whether or not districts and students would benefit from the merger of existing collaboratives;
267 and (7) the provision of non-education related services by education collaboratives to other
268 government entities and the appropriateness and effect of those provisions on the core mission
269 and purpose of the collaborative.

270 The commission shall consult with and solicit input from various persons and groups,
271 including, but not limited to: the attorney general's office; the state auditor's office; the inspector

272 general's office; the department of developmental services; the division of local services; the
273 executive directors of education collaboratives of varying size and scope in the commonwealth;
274 teachers from education collaboratives of varying size and scope in the commonwealth; the
275 chairs of the joint committee on children, families and persons with disabilities; organizations
276 representing individuals with developmental disabilities, including the Arc of Massachusetts and
277 the Association of Developmental Disability Providers; organizations representing children with
278 disabilities and their parents; and associations representing special education administrators and
279 other educational administrators, school business officers, municipal officials and charter
280 schools.

281 The first meeting of the commission shall take place within 45 days after the effective
282 date of this act. The commission shall file a report containing its recommendations, including
283 legislation and regulations necessary to carry out its recommendations, with the clerks of the
284 house and senate not later than 12 months following the first meeting of the commission.

285 SECTION 6. Section 1 of this act shall take effect 90 days after the effective date of this
286 act.