

# SENATE . . . . . No. 2208

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Senate April 5, 2016 -- Text of amendment (23) (offered by Senator Rodrigues) to the Senate Bill enhancing reform, innovation and success in education (Senate, No. 2203)

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## The Commonwealth of Massachusetts

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In the One Hundred and Eighty-Ninth General Court  
(2015-2016)  
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1 by striking out all after the enacting clause and inserting in place thereof the following  
2 text:-

3 "SECTION 1. Subsection (a) of section 1J of chapter 69 of the General Laws, as  
4 appearing in the 2014 Official Edition, is hereby amended by adding the following paragraph:-

5 The board may entertain and approve applications to establish a Horace Mann or  
6 commonwealth charter school that is designated to serve the student population served by a  
7 district school that has been designated by the board as underperforming or chronically  
8 underperforming. In reviewing such an application, the board shall consider the likelihood of  
9 success of any turnaround plans proposed or adopted pursuant to this section or under the  
10 provisions of section 1K.

11 SECTION 2. Subsection (a) of section 1K of said chapter 69, as so appearing, is hereby  
12 amended by adding the following paragraph:-

13 The board may entertain and approve applications to establish a Horace Mann or  
14 commonwealth charter school to serve the student population of any school that is located in a  
15 district that has been designated by the board as chronically underperforming. In reviewing such

16 an application, the board shall consider the likelihood of success of any turnaround plans  
17 proposed or adopted pursuant to this section or under the provisions of section 1J.

18 SECTION 3. Subsection (b) of section 15 of chapter 70B of the General Laws, as  
19 appearing in the 2014 Official Edition, is hereby amended by striking out, in lines 49-76  
20 inclusive, the second paragraph and inserting in place thereof the following paragraph:-

21 Before the sale or lease of an assisted structure or facility or a portion of that structure or  
22 facility, the school district in control of the structure or facility shall submit to the authority a  
23 district-wide school facility use plan that shall include, but not be limited to, a listing of all  
24 school facilities under the control of the school district, a detailed description of both the current  
25 use and proposed use of each school facility, the most recent enrollment data, by school facility,  
26 then available to the school district, a detailed floor plan of each school facility that shows and  
27 labels each space in the facility and whether it is used as a classroom or has some other use and  
28 any other information that may be required by the authority to understand the district's school  
29 facility use plan. If the plan includes the closure, sale or lease of a school facility or any part of a  
30 school facility, the authority may conduct, with the full cooperation of the district, an analysis of  
31 district-wide enrollment capacity and future enrollment trends for the district. Such an analysis  
32 also may be requested by one or more commonwealth charter schools established pursuant to  
33 section 89 of chapter 71, where there is reasonable evidence of excess capacity sufficient to meet  
34 the facilities needs of such charter schools. If the capacity analysis and enrollment projection  
35 indicate an extended period of significant excess capacity within the district's educational  
36 facilities, the district shall, prior to consideration of any other disposition of the identified excess  
37 capacity, make a good faith offer to sell or lease in whole or in part at fair market value the  
38 identified excess capacity to one or more commonwealth charter schools established pursuant to

39 section 89 of chapter 71 or an applicant or applicants for a commonwealth charter school  
40 pursuant to said section 89 of chapter 71 that serve or are seeking to serve students who live in  
41 the school district where such a charter school or schools exist. In the event that there is not  
42 enough excess capacity to meet the space needs of all the eligible commonwealth charter schools  
43 that seek to lease or buy such excess capacity, priority shall be given to those charter schools  
44 with the most success as measured by the criteria identified in section 1I of chapter 69.  
45 Notwithstanding any other provision of this section, commonwealth charter schools shall be  
46 given the opportunity to match any good-faith offer received by the district for the excess  
47 capacity; provided that, if the district does not receive any such offer from another entity, the  
48 total rent for excess capacity leased to a commonwealth charter school for that school year shall  
49 not exceed the total per pupil capital needs component received by the commonwealth charter  
50 school for that school year pursuant to subsection (ff) of section 89 of chapter 71. The authority  
51 shall not recapture commonwealth and authority assistance for any such excess capacity that is  
52 sold or leased to a commonwealth charter school or an applicant for a commonwealth charter  
53 school.

54 SECTION 4. Said section 15 of said chapter 70B, as so appearing, is hereby further  
55 amended by striking out, in lines 86-88 inclusive, subsection (d) and inserting in place thereof  
56 the following subsection:-

57 (d) Except for the provisions of the second paragraph of subsection (b), the provisions of  
58 this section, at the discretion of the authority, shall not apply to sales and leases of such assisted  
59 structures or facilities for nonprofit public purposes.

60 SECTION 5. Subsection (c) of section 89 of chapter 71 of the General Laws, as  
61 appearing in the 2014 Official Edition, is hereby amended by adding the following paragraph:-

62 An existing Horace Mann charter school at the time of its renewal pursuant to subsection  
63 (dd) may be converted to a commonwealth charter school subject to subsection (i) upon a vote of  
64 its board of trustees, followed by a majority of the school faculty or a majority of the parents and  
65 guardians of students enrolled at the school signing a petition for such a conversion. School  
66 faculty who prior to such a petition have given notice to leave the school the following year  
67 because of retirement, resignation, voluntary transfer, or any other reason or who have received  
68 notice to leave the school the following year because of involuntary transfer, dismissal or any  
69 other reason, shall not be eligible to sign the petition and shall not be counted toward the total  
70 number of school faculty members. Parents and guardians of students who will not be enrolled  
71 in the school the following school year because the school does not provide education in the  
72 specific grade level of the student shall not be eligible to sign the petition and shall not be  
73 counted toward the total number of parents and guardians of students enrolled in the school. For  
74 petitions of parents and guardians, there shall be available one signature per family unit. When a  
75 majority of the school faculty or parents and guardians signs a petition supporting the conversion  
76 to a commonwealth charter school, the school administrator shall forward the results of the  
77 petition to the board within 30 days for review. In determining whether to approve the  
78 conversion, the board shall review the school's original application for a charter, submitted  
79 pursuant to subsection (e), and assess whether the conversion to a commonwealth charter  
80 necessitates amendments to the charter prior to board approval for the conversion. If the board  
81 approves the conversion, the school shall grant priority for enrollment first to students who were  
82 actually enrolled in the school in the school year prior to the conversion and to their siblings.

83 SECTION 6. Said section 89 of said chapter 71, as so appearing, is hereby further  
84 amended by striking out subsection (i)(1) and inserting in place thereof the following  
85 subsection:-

86 (i)(1) Not more than 120 charter schools shall be allowed to operate in the  
87 commonwealth at any time, excluding those approved pursuant to paragraph (3) or paragraph  
88 (5); provided, however, that of the 120 charter schools, not more than 48 shall be Horace Mann  
89 charter schools; provided, however, notwithstanding subsection (c) the 14 new Horace Mann  
90 charter schools and any Horace Mann charter school established to serve the student population  
91 of a school designated by the department as underperforming or chronically underperforming  
92 pursuant to section 1J of chapter 69 shall not be subject to the requirement of an agreement with  
93 the local collective bargaining unit prior to board approval; provided, further, that after the  
94 charter for these 14 new Horace Mann charter schools and any Horace Mann charter school  
95 established to serve the student population of a school designated by the department as  
96 underperforming or chronically underperforming pursuant to section 1J of chapter 69 have been  
97 granted by the board, the schools shall develop a memorandum of understanding with the school  
98 committee and the local union regarding any waivers to applicable collective bargaining  
99 agreements; provided, further, that if an agreement is not reached on the memorandum of  
100 understanding at least 30 days before the scheduled opening of the school, the charter school  
101 shall operate under the terms of its charter until an agreement is reached; provided, further, that  
102 not less than 4 of the 14 new Horace Mann charter schools shall be located in a municipality with  
103 more than 500,000 residents; and not more than 72 shall be commonwealth charter schools. The  
104 board shall not approve a new commonwealth charter school in any community with a

105 population of less than 30,000 as determined by the most recent United States Census estimate,  
106 unless it is a regional charter school.

107 Applications to establish a charter school shall be submitted to the board annually by  
108 November 15. The board shall review the applications and grant new charters in February of the  
109 following year; provided that applications to establish the 14 new Horace Mann charter schools  
110 under this subsection may be accepted, solicited, and approved by the board at any time during  
111 the year. The board further may accept, solicit, and approve applications to establish a Horace  
112 Mann or commonwealth charter school to serve the student population served by a district school  
113 that has been designated by the department as underperforming or chronically underperforming  
114 pursuant to section 1J of chapter 69 or to serve a student population of any school that is located  
115 in a district that has been designated by the board as chronically underperforming pursuant to  
116 section 1K of chapter 69 at any time during the year; provided that, in considering approval of  
117 such an application, the board shall consider the likelihood of success of any turnaround plan  
118 proposed or adopted pursuant to sections 1J or 1K of chapter 69.

119 SECTION 7. Subsection (i)(2) of said section 89 of said chapter 71, as so appearing, is  
120 hereby amended by striking out, in lines 197-202 inclusive, the second paragraph.

121 SECTION 8. Subsection (i) of said section 89 of said chapter 71, as so appearing, is  
122 hereby further amended by adding the following subsection:-

123 (5) Notwithstanding the provisions of this subsection relative to the number of charter  
124 schools allowed to operate in the commonwealth or in any district, the board each year may  
125 approve up to 12 additional commonwealth charters, commonwealth charter amendments to  
126 increase authorized enrollment, or a combination thereof. Any approvals under this paragraph

127 shall be limited to new or expanded commonwealth charter schools in districts or regions where  
128 the data released on overall student performance on the statewide assessment system approved  
129 by the board is in the bottom 25 percent of all districts in the two years preceding the charter  
130 application. The total enrollment authorized by all such approvals in a single fiscal year shall not  
131 exceed 1 percent of the total statewide public school enrollment for the previous year as  
132 determined by the board.

133         In the event that the number of qualified applicants under this paragraph in any year  
134 exceeds 12, the board shall give priority among such qualified applicants to those seeking to  
135 establish or expand enrollment in commonwealth charter schools where the demonstrated parent  
136 demand for additional public school options is greatest. The board shall apply to all such  
137 applicants review and approval standards as rigorous as those applied to all other commonwealth  
138 charter applicants. The recruitment and retention and multilingual outreach provisions of  
139 paragraph (3) shall apply to any commonwealth charter school authorized under this paragraph,  
140 and any new commonwealth charter schools authorized by this paragraph shall be subject to the  
141 same requirements regarding student performance standards established in subsection (v) and  
142 shall be renewed pursuant to the same standards established in subsection (dd).

143         Nothing in this paragraph shall affect the issuance of commonwealth charters under  
144 paragraph (3). The percentages of net school spending set forth in paragraphs (2) and (3) shall  
145 not apply to or otherwise operate to limit the board's authority to approve commonwealth  
146 charters or commonwealth charter amendments under this paragraph; provided, however, that  
147 such percentages shall continue to apply to commonwealth charters issued otherwise than under  
148 this paragraph.

149 Except as provided in this paragraph, all otherwise applicable provisions of this section  
150 shall apply to commonwealth charters or amendments approved under this paragraph.

151 SECTION 9. Said section 89 of said chapter 71, as so appearing, is hereby further  
152 amended by striking out subsection (m) and inserting in place thereof the following subsection:-

153 (m)(1) Charter schools shall be open to all students, on a space available basis, and shall  
154 not discriminate on the basis of race, color, national origin, creed, sex, gender identity, ethnicity,  
155 sexual orientation, mental or physical disability, age, ancestry, athletic performance, special  
156 need, or proficiency in the English language or a foreign language or academic achievement.

157 (2) Charter schools may limit enrollment to specific grade levels and may structure  
158 curriculum around particular areas of focus such as mathematics, science or the arts.

159 Upon the commissioner's recommendation and with the board's approval, in order to  
160 support a charter school's mission and purpose, a charter school may award in any admissions  
161 lottery developed pursuant to subsection (n) added weight to any eligible student applicants who  
162 qualify as high-need students, as defined by the board, to the degree such an approach is aligned  
163 with the school's mission and purpose and otherwise consistent with its application required  
164 under subsection (e). For the purposes of this paragraph, the board's definition of high-need  
165 students shall include, but not be limited to, the following: (i) students who have a disability as  
166 defined in section 1 of chapter 71B; (ii) limited English-proficient students; (iii) students who  
167 qualify for the federal free or reduced lunch program or another successor measure as determined  
168 by the department; (iv) children who are homeless or in a foster care placement; and (v) students  
169 who are at risk of educational failure due to excessive absenteeism, truancy, dropping out of  
170 school, or involvement with the juvenile justice system or other law enforcement agency. Any



171 charter school applicant proposing to use such a weighted lottery system shall submit to the  
172 board as part of its application or as a proposed amendment to its charter detailed information  
173 regarding the enrollment procedure it intends to implement to effect such an approach.

174 (3) There shall be no application fee for admission to a charter school. There shall be no  
175 tuition charge for students attending charter schools.

176 SECTION 10. Said section 89 of said chapter 71, as so appearing, is hereby further  
177 amended by striking out subsection (n) and inserting in place thereof the following subsection:-

178 (n)(1) Consistent with any admissions preferences or weights approved by the board  
179 pursuant to subsection (m)(2) and this subsection, preference for enrollment in a commonwealth  
180 charter school shall be given to students who reside in the city or town in which the charter  
181 school is located and to their siblings; provided that priority for enrollment in a commonwealth  
182 charter school granted to serve students who are enrolled in a school designated as  
183 underperforming or chronically underperforming pursuant to section 1J of chapter 69 shall be  
184 given first to students actually enrolled in the school in the school year prior to the charter school  
185 opening and to their siblings and second to students who otherwise would be eligible to attend  
186 the designated school consistent with the district's assignment policies and the charter school's  
187 enrollment procedure approved by the board.

188 Consistent with any admissions preferences or weights approved by the board pursuant to  
189 subsection (m)(2) and this subsection, priority for enrollment in a Horace Mann charter school  
190 shall be given first to students actually enrolled in the school in the school year prior to the  
191 charter school opening and to their siblings; second to other students actually enrolled in the  
192 public schools of the district where the Horace Mann charter school is to be located; and third to

193 other resident students; provided that priority for enrollment in a Horace Mann charter school  
194 granted to serve students who are enrolled in a school designated as underperforming or  
195 chronically underperforming pursuant to section 1J of chapter 69 shall be given first to students  
196 actually enrolled in the school in the school year prior to the charter school opening and to their  
197 siblings and second to students who otherwise would be eligible to attend the designated school  
198 consistent with the district's assignment policies and the charter school's enrollment procedure  
199 approved by the board.

200 (2) Subject to approval of the commissioner, a charter school voluntarily may enter into a  
201 written agreement with the district or districts from which students attending the charter school  
202 will be drawn enabling the charter school to be included in a district's student enrollment system  
203 that takes into account parental preferences when determining the school to which a student is  
204 assigned.

205 (3) If the total number of students who are eligible to attend and apply to a charter school  
206 and who reside in the city or town in which the charter school is located or are siblings of  
207 students already attending said charter school, is greater than the number of spaces available, an  
208 admissions lottery, including all eligible students applying, shall be held to fill all of the spaces  
209 in that school from among the students. If there are more spaces available than eligible applicants  
210 from the city or town in which the charter school is located and who are siblings of current  
211 students and more eligible applicants than spaces left available, a lottery shall be held to  
212 determine which of the applicants shall be admitted; provided, however, that a lottery conducted  
213 for Horace Mann charter schools shall reflect the enrollment priorities of this section.  
214 Notwithstanding this subsection, upon application by the board of trustees of a charter school or  
215 by the persons or entities seeking to establish a charter school, the board may amend or grant a

216 charter designating such school a regional charter school; provided, however, that such regional  
217 charter school shall be exempt from the local preference provision of this paragraph; provided  
218 further, that such regional charter school shall continue to grant a preference of siblings of  
219 currently enrolled students; and provided further, that if the number of applicants remaining is  
220 greater than the number of spaces available, such regional charter school shall conduct a single  
221 lottery to determine which applicants shall be admitted.

222 (4) Subject to approval by the board, school districts or municipalities that rent classroom  
223 space to commonwealth charter schools under lease agreements with terms of at least 10 years  
224 may require such schools to offer enrollment weights or preferences to students who reside in a  
225 specific geographical area in which such school buildings are located as a condition of such lease  
226 agreements; provided, however, that within this geographical preference area, the percentage of  
227 students who qualify for the free or reduced price lunch program or another successor measure as  
228 determined by the department is equal to or higher than the district's overall percentage of  
229 students who qualify for this program.

230 Subject to approval by the board, charter schools may voluntarily offer enrollment  
231 weights or preferences to students who reside in a specific geographical area within the district in  
232 which the school is located; provided, however, that within this geographical preference area, the  
233 percentage of students who qualify for the free or reduced price lunch program or another  
234 successor measure as determined by the department is equal to or higher than the district's  
235 overall percentage of students who qualify for this program.

236 In addition to providing the information pursuant to subsection (e), any charter school  
237 that offers geographical enrollment weights or preferences shall include in its application for

238 approval: (i) a definition of the geographical area for which it will offer an enrollment weight or  
239 preference; (ii) an explanation of how this weight or preference will support the mission of the  
240 charter school and the academic performance of its students; (iii) evidence that within this  
241 geographical area there resides an equal or higher percentage of low-income students, as  
242 measured by qualification for the free or reduced price lunch program or another successor  
243 measure as determined by the department, as in the district as a whole; and (iv) an explanation of  
244 how the charter school will target its recruitment and retention efforts for students within this  
245 geographical area. When any charter school that chooses to offer a geographical weight or  
246 preference seeks charter renewal and intends to continue applying the geographical weight or  
247 preference, the board shall consider whether the weighted or preferred area continues to  
248 support the mission of the charter school and the academic performance of its students, as well as  
249 whether the area continues to serve an adequate percentage of low-income students to qualify as  
250 a geographical weighted or preferred area under this subsection.

251           In commonwealth charter schools that offer geographical enrollment preferences,  
252 students who reside within the geographical preference area and their siblings shall have priority  
253 for enrollment in any open seats over students who reside in the city or town in which the charter  
254 school is located but outside of the geographical preference area. In Horace Mann charter  
255 schools that offer geographical enrollment preferences, priority for enrollment shall be given first  
256 to students actually enrolled in the school in the school year prior to the charter school opening  
257 and to their siblings; second to students who otherwise would be eligible to attend the designated  
258 school consistent with the district's assignment policies and the charter school's enrollment  
259 procedure approved by the board.

260 (5) Any charter school applicant proposing to include in its enrollment procedure weights  
261 or preferences pursuant to subsection (m)(2) or this subsection shall include in its application to  
262 the board detailed information regarding the enrollment procedure it intends to implement to  
263 effect any such weights or preferences.

264 (6) In any instance where a charter school approved after January 1, 2011 enrolls more  
265 than 20 per cent of its total enrollment from school districts not included in its original charter  
266 pursuant to subsection (h) for 2 consecutive years, the charter school shall submit an application  
267 to the board for an amendment to its charter that reflects its actual enrollment patterns; provided  
268 further that upon renewal of a charter school approved prior to January 1, 2011, the board shall  
269 establish a timeline of not less than 5 years for the charter to comply with this requirement.

270 Nothing in this section shall be construed to require a charter school to unenroll any  
271 student currently in attendance at the time this act takes effect.

272 When a student stops attending a charter school for any reason, the charter school shall  
273 fill the vacancy with the next available student on the waitlist for the grade in which the vacancy  
274 occurs and shall continue through the waitlist until a student fills the vacant seat. If there is no  
275 waitlist, a charter school shall publicize an open seat to the students of the sending district or  
276 districts and make attempts to fill said vacant seat. Charter schools shall attempt to fill vacant  
277 seats up to February 15, provided, however, that charter schools may but are not required to fill  
278 vacant seats after February 15. If a vacancy occurs after February 15, such vacancy shall remain  
279 with the grade cohort and shall be filled in the following September if it has not previously been  
280 filled. A vacancy occurring after February 15 shall not be filled by adding a student to a lower  
281 grade level. Charter schools shall attempt to fill vacant seats up to February 15, excluding seats

282 in the last half of the grades offered by the charter school, and grades 10, 11 and 12. Within 30  
283 days of a vacancy being filled, the charter school shall send the name of the student filling such  
284 vacancy to the department for the purposes of the department updating its waitlist. Nothing in  
285 this paragraph or paragraph (7) shall preclude a charter school, with the board's approval, from  
286 filling vacancies during a school year, in lieu of maintaining a waitlist, by holding additional  
287 lotteries for those student applicants who have applied for admission to the school for enrollment  
288 in the current school year; provided further that the lottery may include any weights or  
289 preferences consistent with the school's mission and purpose and approved by the board  
290 pursuant to this subsection and subsection (m)(2).

291 (7) The names of students who entered the lottery but did not gain admission shall be  
292 maintained on a waitlist, which shall be forwarded to the department not later than June 1 in the  
293 year in which the lottery is held. In addition to the names of students, the school shall supply to  
294 the department each student's home address, telephone number, grade level and other  
295 information the department deems necessary. The department shall maintain a consolidated  
296 waitlist for each municipality in order to determine the number of individual students in each  
297 municipality seeking admission to charter schools.

298 SECTION 11. Subsection (dd) of said section 89 of said chapter 71, as so appearing, is  
299 hereby amended by striking out, in lines 621-624 inclusive, the words "provided, however, that a  
300 charter for a Horace Mann charter school shall not be renewed by the board without a majority  
301 vote of the school committee and local collective bargaining unit in the district where said  
302 charter school is located" and inserting in place thereof the following words:- provided, however,  
303 that an amendment or renewal of a charter for a Horace Mann charter school shall be subject to  
304 approval by majority vote of the school committee and local collective bargaining unit in the

305 district where the charter school is located only to the extent that its initial charter required such  
306 approval.

307 SECTION 12. Subsection (ff) of said section 89 of said chapter 71, as so appearing, is  
308 hereby amended by striking out the ninth paragraph and inserting in place thereof the following  
309 paragraph:-

310 The department shall, subject to appropriation, provide funding to charter schools for a  
311 portion of the per pupil capital needs component included in the charter tuition amount and shall  
312 reimburse the sending school districts for said costs. In fiscal year 2011 and thereafter, such  
313 funding shall not be less than the per pupil amount provided in fiscal year 2010; but in fiscal year  
314 2018 and thereafter, the set amount will be adjusted annually consistent with the new school  
315 building construction cost index calculated by the Bureau of Labor Statistics Producer Price  
316 Index.

317 SECTION 13. Sections 3 and 4 shall take effect on July 1, 2016.

318 SECTION 14. Section 12 shall take effect on July 1, 2017.

319 SECTION 15. Except as otherwise specified, this act shall take effect upon enactment."