

SENATE No. 00197

The Commonwealth of Massachusetts

PRESENTED BY:

Sal N. DiDomenico

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 enhancing english opportunities for all students in the commonwealth .

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Sal N. DiDomenico</i>	<i>Middlesex, Suffolk, and Essex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>

SENATE No. 00197

By Mr. DiDomenico, petition (accompanied by bill, Senate, No. 197) of Provost, Eldridge and DiDomenico for legislation relative to an English language learner's program in the public schools [Joint Committee on Education].

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 486 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to enhancing english opportunities for all students in the commonwealth .

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 1I of chapter 69 of the General Laws, is hereby amended by
2 striking out the thirteenth paragraph and inserting in place thereof the following paragraph:

3 Each school district required to provide an English language learners program under
4 chapter 71A shall file the following information with the department annually:

5 (a) the type of English language learners programs provided;

6 (b) with regard to limited English proficient students (i) the number enrolled in each type of
7 English language learners program; (ii) the number enrolled in English as a second language who
8 are not enrolled in another English language learners program; (iii) the results of basic skills,

9 curriculum assessment, achievement and language proficiency testing, whether administered in
10 English or in the native language; (iv) the absentee, suspension, expulsion, dropout and
11 promotion rates; and (v) the number of years each limited English proficient student has been
12 enrolled in an English language learners program;

13 (c) the number of students each year who have enrolled in institutions of higher education
14 and were formerly enrolled in an English language learners program;

15 (d) the academic progress in regular education of students who have completed an English
16 language learners program;

17 (e) for each limited English proficient student receiving special education, the number of
18 years in the school district prior to special education evaluation and the movement in special
19 education programs by program placement;

20 (f) the number of limited English proficient students enrolled in programs of occupational
21 or vocational education;

22 (g) the name, national origin, native language, certificates held, language proficiency, grade
23 levels and subjects taught by each teacher of an English language learners program, bilingual
24 aides or paraprofessionals, bilingual guidance or adjustment counselors and bilingual school
25 psychologists;

26 (h) the per pupil expenditures for each full time equivalent student enrolled in an English
27 language learners program;

28 (i) the sources and amounts of all funds expended on students enrolled in English language
29 learners programs, broken down by local, state and federal sources, and whether any such funds

30 expended supplanted, rather than supplemented, the local school district obligation; the
31 participation of parents through parent advisory councils; and

32 (j) whether there were any complaints filed with any federal or state court or administrative
33 agency, since the program's inception, concerning the compliance with federal or state minimum
34 legal requirements; the disposition of such complaint and the monitoring and evaluation of any
35 such agreement or court order relative to such complaint.

36 SECTION 2. Said section 1I of said chapter 69, as so appearing, is hereby further
37 amended by adding the following paragraph:

38 The commissioner annually shall analyze and publish data reported by school districts
39 under this section regarding English language learners programs and limited English proficient
40 students. Publication shall include, but need not be limited to, availability on the department's
41 worldwide web site. The commissioner shall submit annually a report to the joint committee on
42 education, arts and humanities on such data on a statewide and school district basis, including,
43 but not limited to, by language group and type of English language learners program.

44 SECTION 3. The fifth paragraph of said section 59C of said chapter 71, as so appearing,
45 is hereby amended by inserting after the fourth sentence the following sentence: In school
46 districts with language minority student populations, the plan to improve student performance
47 shall include a description of the opportunities to be provided by the school to ensure the
48 progress of limited English proficient students in developing oral comprehension, speaking,
49 reading and writing of English, and also in meeting academic standards and curriculum
50 frameworks established under sections 1D and 1E of chapter 69.

51 SECTION 4. Chapter 71A, as appearing in the 2006 Official Edition, is hereby amended
52 by striking out section 1, and inserting in place thereof the following section:

53 Section 1. As used in this chapter, the following words shall, unless the context requires
54 otherwise, have the following meanings:

55 "Academic standards", academic standards established under section 1D of chapter 69 of the
56 General Laws.

57 "Commissioner", the commissioner of education.

58 "Curriculum frameworks", curriculum frameworks established under section 1E of chapter
59 69 of the General Laws.

60 "Department", the department of education.

61 "English as a second language", a part-time program supporting the development of English
62 language and skills for limited English proficient students transitioning or assigned to regular
63 education classes.

64 "English language learners program", any of the following, or any combination hereof:
65 transitional bilingual education, two-way bilingual education, structured English immersion,
66 English as a second language, or other full time innovative program designed to accelerate
67 English language proficiency and academic achievement approved by the department under
68 section 2A.

69 "Limited English proficient student", (1) a student who was not born in the United States
70 whose native language is other than English and who is not able to perform ordinary class work

71 in English; or (2) a student who was born in the United States of non-English speaking parents
72 and who is not able to perform ordinary class work in English.

73 "Office of language acquisition", the office of language acquisition established in section 1A
74 of chapter 69.

75 "Modified bilingual-world language bilingual education", a fulltime program of whole school
76 instruction for limited English proficient students and fully English proficient students that
77 incorporates both the language and the culture of the language minority group to include it in all
78 aspects of the school curricula in an English speaking classroom where teachers are trained in
79 English as a second language techniques.

80 "Structured English immersion", a fulltime program of academic instruction and English
81 language learning for limited English proficient students in which primarily English is the
82 medium of classroom instruction and the native language of such student is used for support and
83 clarification.

84 "Transitional bilingual education", a fulltime program of instruction (1) in all those courses
85 or subjects which are required by the student's school district which shall be given in the native
86 language of the limited English proficient students who are enrolled in the program and also in
87 English, (2) in the reading and writing of the native language of the limited English proficient
88 students who are enrolled in the program and in the oral comprehension, speaking, reading and
89 writing of English, and (3) in the history and culture of the country, territory or geographic area
90 which is the native land of the parents of the limited English proficient students who are enrolled
91 in the program and in the history and culture of the United States.

92 "Two-way bilingual education", a fulltime program in which the curriculum is structured so
93 that limited English proficient students of the same language group and fully English proficient
94 students develop full literacy in 2 languages by being taught in the same classroom in which the
95 medium of instruction is both English and the language of the limited English proficient
96 students.

97 SECTION 5. Said chapter 71A, as so appearing, is hereby further amended by striking
98 out section 2 and inserting in place thereof the following section:

99 Section 2. Each school district shall determine annually, not later than the first day of
100 March, under regulations promulgated by the department, the number of limited English
101 proficient students within their school system in grades kindergarten through 12. At the
102 beginning of any school year, the school committee shall establish a policy requiring that the
103 district offer at least 1 English language learners program for all limited English proficient
104 students. Every school district shall assess, using uniform assessment instruments prescribed by
105 the department, the language dominance, level of English proficiency, and ability to perform
106 regular education classroom work in English of a newly enrolled student who may be of limited
107 English proficiency and the academic level of such student, for the purpose of placing the student
108 in an English language learners program. Every limited English proficient student enrolled in a
109 public school system shall participate in an English language learners program established by the
110 school district in which the student resides, unless the parents or legal guardian of the student
111 decide otherwise in accordance with section 3. An English language learners program shall
112 consist of any of the following, or any combination thereof: transitional bilingual education, two-
113 way bilingual education, structured English immersion, English as a second language, or other
114 innovative program designed to accelerate English language proficiency approved by the

115 department under section 2A. No school district with 20 or more limited English proficient
116 students in any 1 language group may offer only English as a second language.

117 In any school district with 50 or more limited English proficient students in any 1
118 language group at the elementary school level, the school committee shall establish a policy
119 requiring that the district offer at least 2 full time English language learners programs for those
120 students. In any school district with 50 or more limited English proficient students in any 1
121 language group at the middle school level, the school committee shall establish a policy
122 requiring that the district offer at least 2 fulltime English language learners programs for those
123 students. In any school district with 50 or more limited English proficient students in any 1
124 language group at the high school level, the school committee shall establish a policy requiring
125 that the district offer at least 2 fulltime English language learners programs for those students.
126 The policy shall be consistent with the school district's course enrollment standards. In
127 determining the types of English language learners programs to be offered, the policy
128 determination of the school committee shall reflect that strong consideration was given to the
129 programs requested by the parents or legal guardians of limited English proficient students.

130 SECTION 6. Said chapter 71A is hereby further amended by inserting after section 2 the
131 following two sections:

132 Section 2A. At least once every 3 years, each school district with any limited English
133 proficient students shall submit a district plan to the commissioner for approval in accordance
134 with regulations promulgated by the department. The office of language acquisition shall make
135 recommendations to the commissioner on whether any such plan shall be approved. The district
136 shall provide any limited English proficient student with an appropriate English language

137 learners program to assist such student in becoming proficient in using the English language and
138 to enable the student to participate effectively in the district's regular or advanced educational
139 programs and extracurricular activities. To the extent practical, districts shall make available
140 reasonable enrichment opportunities for interested limited English proficient students, either
141 during or outside the regular school day, including, but not limited to, as part of an English
142 language learners program or through foreign language courses or after school programs, to help
143 them maintain their native language skills. The district plan shall define and address all elements
144 and goals of the program or programs to be chosen by the district. Prior to developing a district
145 plan, the district shall notify parents or legal guardians of limited English proficient students
146 within the district that such a plan is being developed, and shall involve such parents or legal
147 guardians in the development and review of such plan.

148 In a school district with 20 or more limited English proficient students in any 1 language
149 group, the district plan shall include, but not be limited to, the following:

150 (1) A description of programs and services currently being provided by the district to
151 limited English proficient students.

152 (2) A description of the range of English language learners programs and services the
153 district will make available to all limited English proficient students with a rationale for each
154 option proposed, and a justification for any proposed changes in existing programs and services.

155 (3) A description of the opportunities the district will make available to limited English
156 proficient students for instruction in maintaining or developing proficiency in their native
157 language, including, but not limited to, as part of an English language learners program or
158 through foreign language classes or after school programs.

159 (4) A description of how English language learners programs or services will be provided
160 to ensure that a student has the opportunity to: (a) become proficient in using the English
161 language for oral communication and literacy in English; (b) master curriculum content
162 according to the district's curriculum guidelines, state academic standards and curriculum
163 frameworks; and (c) be able to participate in the district's regular or advanced educational
164 programs and extracurricular activities.

165 (5) A description of the qualifications and certification status of all staff who will provide
166 English language learners programs and services to limited English proficient students.

167 (6) A description of the uniform assessment instruments, prescribed by the department, to
168 be utilized by the district to determine the language dominance, level of English proficiency and
169 ability to perform regular education classroom work in English of a newly enrolled student who
170 may be of limited English proficiency and the academic level of such student, for the purpose of
171 placing such student in a program established under this chapter. Such description shall include
172 the qualifications of staff administering such assessments.

173 (7) A description of how the student's oral comprehension, speaking, reading and writing of
174 English will be assessed annually by qualified personnel, using uniform assessment instruments
175 prescribed by the department, and how these assessments will be used in conjunction with other
176 evaluation information to determine when the student has achieved a level of English language
177 proficiency that will enable the student to perform regular education class work.

178 (8) A description of how the school district will evaluate the effectiveness of English
179 language learners programs and services provided to limited English proficient students in terms

180 of helping such students attain English language proficiency and master academic standards and
181 curriculum frameworks.

182 (9) A description of the measures that will be used to ensure that former limited English
183 proficient students in regular education classrooms have the opportunity to continue their
184 progress in all areas of the curriculum, including compliance with the academic standards and
185 curriculum frameworks.

186 (10) A description of the measures that will be used to ensure that limited English
187 proficient students whose parents or legal guardians have chosen to enroll them in a regular
188 education classroom and not in an English language learners program will be provided the
189 opportunity to continue to progress in all areas of the curriculum, including compliance with the
190 academic standards and curriculum frameworks.

191 (11) A description of the training to be provided for all staff in working with culturally and
192 linguistically diverse student populations. Such description shall also include a staff development
193 plan that describes how the district will build capacity among all staff in the school district to
194 serve limited English proficient students.

195 (12) A description and documentation of how principals, teachers, parents or legal
196 guardians of limited English proficient students, parent advisory councils and the general public
197 were included in the development and review of the district plan.

198 (13) A description of how parents or legal guardians of limited English proficient students
199 will be informed when it is determined through assessments prescribed by the department that
200 their child can participate fully in the English language curriculum without native language or
201 other language support services.

202 (14) A description of how parents or legal guardians of limited English proficient students
203 will be provided the opportunity to continue to remain involved in English language learners
204 programs.

205 In a school district with fewer than 20 limited English proficient students in any 1
206 language group, the district plan shall include, but not be limited to, the following:

207 (1) A description of the programs and services currently being provided by the district to
208 limited English proficient students.

209 (2) A description of the range of English language learners programs and services the
210 district will make available to all limited English proficient students with a rationale for each
211 option proposed, and a justification for any proposed changes in existing programs and services.

212 (3) A description of the qualifications and certification status of all staff who will provide
213 English language learners programs and services to limited English proficient students.

214 (4) A description of the uniform assessment instruments, prescribed by the department, to
215 be utilized by the district to determine the language dominance, level of English proficiency, and
216 ability to perform regular education classroom work in English of a newly enrolled student who
217 may be of limited English proficiency and the academic level of such student, for the purpose of
218 placing such student in an English language learners program. Such description shall include the
219 qualifications of staff administering such assessments.

220 (5) A description of how the student's oral comprehension, speaking, reading and writing of
221 English will be assessed annually by qualified personnel, using uniform assessment instruments
222 prescribed by the department, and how these assessments will be used in conjunction with other

223 evaluation information to determine when the student has achieved a level of English language
224 proficiency that will enable the student to perform regular education class work.

225 A district plan shall be valid for 3 years. In the third year, a school district shall submit an
226 updated district plan to the commissioner for approval in the manner provided herein for
227 submission of a district plan. In addition to the requirements of this section for a district plan, the
228 updated district plan shall also include documentation evidencing the academic outcomes for
229 limited English proficient students served under the prior district plan.

230 In a school district with 20 or more limited English proficient students in any 1 language
231 group, no district plan or updated district plan shall be submitted to the commissioner until after
232 a public hearing, with due notice to interested parties, has been held on such plan. The district
233 shall make any such plan available for public inspection at least 10 days prior to any public
234 hearing. Due notice shall include notification published in a newspaper of general circulation in
235 the district, and other reasonable steps to notify parents of limited English proficient students
236 within the district and other interested parties of such hearing, not less than 15 days prior to any
237 such hearing. Any such notification shall include a brief description of the plan, the date, time
238 and place of the hearing, and shall indicate the place where the plan is available for public
239 inspection. Notices to parents or legal guardians of limited English proficient students required
240 by this section shall, to the maximum extent possible, be in a language understandable by the
241 parents or legal guardians.

242 If the commissioner determines that a district is not in compliance with this section, or
243 that a district plan cannot be approved as submitted, the office of language acquisition shall
244 provide advice and technical assistance to the district and shall set a date certain for the

245 submission of a revised district plan. Regulations promulgated by the department to implement
246 this chapter shall include, but not be limited to, measures to deal with districts that fail to submit
247 district plans, or that submit district plans that the commissioner does not approve.

248 The district shall send report cards and progress reports, including, but not limited to,
249 progress in becoming proficient in using the English language, and other school communications
250 to the parents or legal guardians of students enrolled in English language learners programs in
251 the same manner and frequency as report cards and progress reports of other students enrolled in
252 the district. The reports shall, to the maximum extent possible, be written in a language
253 understandable to the parents and legal guardians of such students.

254 Limited English proficient students in any English language learners program shall be
255 taught to the same academic standards and curriculum frameworks as all students, and shall be
256 provided the same opportunities to master such standards and frameworks as other students.
257 Districts shall regularly assess mastery of academic standards and curriculum frameworks;
258 provided, that such assessments may be conducted in a language other than English so long as
259 the student remains in an English language learners program.

260 In order to encourage innovation and best practices, school districts may develop
261 innovative programs designed to accelerate English language proficiency. Any such program
262 shall provide limited English proficient students with the opportunity to develop oral
263 comprehension, speaking, reading, and writing of English and to meet academic standards and
264 curriculum frameworks.

265 Such programs may include, but not be limited to, modified bilingual world language bilingual
266 education. All such programs shall be submitted to the department for review and approval. The
267 office of language acquisition shall review and make recommendations on all such programs.

268 The office of educational quality and accountability shall conduct onsite visits to school
269 districts with approved district plans, established under this section, at least once every 5 years
270 for the purpose of evaluating the effectiveness of such plan and to validate evidence of
271 educational outcomes.

272 The evaluation shall include, but not be limited to, a review of individual student records
273 of all limited English proficient students, a review of the programs and services provided to
274 limited English students to determine if they are in accordance with the district plan, and a
275 review of the drop out rate of limited English proficient students formerly enrolled in the
276 district's English language learners program or programs within the prior 3 years.

277 In the event a review and evaluation undertaken under this section demonstrates that a
278 district is substantially out of compliance with the district plan, or is failing to adequately
279 improve educational outcomes for limited English proficient students enrolled in English
280 language learners programs, the commissioner may recommend to the board of education that
281 any school within the district be declared underperforming under sections 1J and 1K of chapter
282 69.

283 Section 2B. School districts shall assess annually all limited English proficient students in
284 the oral comprehension, speaking, reading, and writing of English by means of English
285 proficiency uniform assessment instruments intended for limited English proficient students,
286 which have been prescribed by the department. Except as provided in this section, any limited

287 English proficient student may remain in an English language learners program for a period of 2
288 years, or until such time as the student achieves a level of English language proficiency that will
289 enable the student to perform successfully in classes in which instruction is given only in English
290 as determined by scores on English proficiency assessments as set forth in this section,
291 whichever occurs first. Only full-day kindergarten shall be counted toward the time limitations
292 set forth in this section. School districts shall develop an intensive English learning success plan
293 for any limited English proficient student whom the district determines fails to achieve scores on
294 English proficiency assessments that, in the determination of the department, reflect sufficient
295 progress toward achieving English language proficiency following the student's first year in any
296 English language learners program. Any such plan shall be developed with the participation and
297 approval of the student's parents or legal guardian. The plan shall concentrate on the needs of the
298 student to master English language literacy skills and shall specify such instruction or services as
299 intensive English classes, intensive tutoring, after or before school programs, summer programs,
300 literacy mentoring, and other academic supports that will assist the student in the rapid
301 acquisition of English necessary to access academic standards and curriculum frameworks at
302 grade level. Any student who fails to achieve scores on English proficiency assessments that, in
303 the determination of the department, reflect sufficient proficiency that will enable the student to
304 perform successfully in classes in which instruction is given only in English, may remain in such
305 intensive plan for up to 1 additional year, with the approval of the student's parents or legal
306 guardian.

307 Any limited English proficient student enrolled in a two-way bilingual education program
308 who has achieved sufficient scores on English proficiency assessments that, in the determination

309 of the department, reflect a level of English proficiency appropriate to the student's grade level,
310 may remain enrolled in such programs for longer than 3 years.

311 If later evidence suggests, as determined by the school district, that a limited English
312 proficient student transferred from an English language learners program to a regular education
313 program prior to his third year in such English language learners program is still disadvantaged
314 by a lack of English proficiency and may benefit from being reenrolled, under an intensive
315 English learning success plan, in an English language learners program offered by the district,
316 such student, with the approval of the student's parents or legal guardian, may be so reenrolled
317 for a length of time equal to that which remained at the time he was transferred.

318 Nothing in this chapter shall be construed to prohibit, limit, restrict or prevent, an
319 educational agency, as defined in 20 U.S.C. 1720 from complying with the provisions of 20
320 U.S.C. 1703 (f).

321 In the event of any conflict between this chapter and an individual educational plan
322 developed for a school age child with a disability under chapter 71B, the provisions of such plan
323 shall prevail.

324 SECTION 7. Said chapter 71A, as so appearing, is hereby further amended by striking
325 out section 3, and inserting in place thereof the following section: -

326 Section 3. School districts shall notify, in writing, the parents or legal guardian of a
327 limited English proficient student of the English language learners program that are available
328 within the district, and shall recommend a specific program for the student. Such notice shall be
329 sent by mail not later than 10 days after the enrollment of the student in the school district. The
330 notice shall contain a simple, non technical description of the purposes, method and content of

331 the various programs, reasons for the school district's recommendation of a specific program, and
332 shall inform the parents or legal guardian that they have the right to visit English language
333 learners program classes in the school district, and to come to the school for a conference to
334 explain the nature of the various English language learners programs. The notice shall further
335 inform such parents or legal guardian that they have the absolute right, if they so desire, to
336 choose any English language learners program for the student from among those provided by the
337 school district, to prevent the student from being placed in an English language learners program,
338 or to withdraw the student from a program, in the manner as hereinafter provided in this section.
339 The notice shall also inform such parents or legal guardian of the existence of any parent
340 advisory council established within the district under this section. Any such notice shall be
341 written in English and in the language of which the parents or legal guardians so notified
342 possesses a primary speaking ability.

343 In any case where a district recommends that a student be placed in an English language
344 learners program, the parents or legal guardian of such student shall have the right, either at the
345 time of the original notification under this section, or at the close of any marking period
346 thereafter, to choose an English language learners program for the student from among those
347 provided by the school district, to prevent the student from being placed in an English language
348 learners program, or to withdraw the student from such program by sending written notice of
349 such decision by mail to the school authorities of the school district in which the student is
350 enrolled. Such written notice shall be sent not later than 10 school days after receipt of the notice
351 sent by the school district, under this section. In the case of a student who is to be withdrawn
352 from an English language learners program, the written notice shall be sent not later than 10
353 school days after the close of any marking period.

354 Each school district operating an English language learners program or programs for 20
355 or more limited English proficient students in any 1 language group shall establish a parent
356 advisory council. The parent advisory council shall be comprised of parents or legal guardians of
357 students who are enrolled in English language learners programs within the district. Each parent
358 advisory council shall have at least 1 representative from every language group in which a
359 program is conducted in a given district. Membership shall be restricted to parents or legal
360 guardians of students enrolled in English language learners programs within the district. The
361 duties of the parent advisory council shall include, but not be limited to, advising the school
362 district on matters that pertain to the education of students in English language learners
363 programs, meeting regularly with school officials to participate in the planning, development,
364 implementation, and evaluation of the district plan required by this chapter, and to participate in
365 the review of school improvement plans established under section 59C of chapter 71 as they
366 pertain to limited English proficient students. Any parent advisory council may, at its request,
367 meet at least once annually with the school council. The parent advisory council shall establish
368 by-laws regarding officers and operational procedures. In the course of its duties under this
369 section, the parent advisory council shall receive assistance from the director of English language
370 learners programs for the district or other appropriate school personnel as designated by the
371 superintendent.

372 SECTION 8. Said chapter 71A, as so appearing, is hereby further amended by striking
373 out section 4, and inserting in place thereof the following section: -

374 Section 4. A school district may allow a nonresident limited English proficient student to
375 enroll in or attend its English language learners programs, and the tuition for such student shall
376 be paid by the school district in which the student resides.

377 Any school district may join with any other school district or districts to provide English
378 language learners programs required or permitted by this chapter.

379 SECTION 9. Said chapter 71A, as so appearing, is hereby further amended by striking
380 out section 5, and inserting in place thereof the following section:-

381 Section 5. In order to ensure daily opportunities for speaking English and for contact with
382 English speaking peers, limited English proficient students shall participate fully with their
383 English-speaking peers in those regular education classrooms, subjects or activities in which
384 verbalization in English is not essential to understanding, including, but not necessarily limited
385 to, homeroom, art, music, physical education, recess and lunch. Each school district shall ensure
386 that limited English proficient students have practical and meaningful opportunity to participate
387 fully in the extra-curricular activities of the regular education programs in the district.

388 English language learners programs shall be located, whenever feasible, in the regular
389 public schools of the district rather than separate facilities.

390 Students enrolled in an English language learners program, whenever possible, shall be
391 placed in classes with students of approximately the same age and level of educational
392 attainment. If students of different age groups or educational levels are combined, the school
393 district so combining shall ensure that the instruction given each student is appropriate to the
394 student's level of educational attainment and the school district shall keep adequate records of the
395 educational level and progress of each student enrolled in a program. The maximum student-
396 teacher ratio and age span shall be set by the department and shall reflect the unique educational
397 needs of children enrolled in English language learners programs.

398 SECTION 10. Said chapter 71A, as so appearing, is hereby further amended by striking
399 out section 6 and inserting in place thereof the following section:

400 Section 6. The commissioner shall grant certificates to teachers of bilingual education or
401 English as a second language under section 38G of chapter 71; provided, that teachers of
402 structured English immersion, or innovative programs approved by the department under section
403 2A shall be certified in bilingual education or English as a second language. No person shall be
404 eligible for employment by a school district as a teacher of bilingual education, or English as a
405 second language, except as provided in this section, unless he has been granted a certificate by
406 the commissioner under said section 38G with respect to the type of position for which he seeks
407 employment. Nothing in this section shall be construed to prevent a school committee from
408 prescribing additional qualifications.

409 In cases of shortages of certified teachers of bilingual education or English as a second
410 language, as determined by the commissioner, the commissioner may grant a waiver to a teacher
411 of bilingual education or English as a second language who is not certified with respect to the
412 type of position for which he seeks employment, if he presents the commissioner with
413 satisfactory evidence indicating he: (1) possesses a speaking and reading ability in a language,
414 other than English, in which English language learners programs are offered and is proficient in
415 written and oral English; (2) is of sound moral character; (3) possesses a bachelor's degree or
416 earned a higher academic degree; (4) meets such requirements as to courses of study, semester
417 hours therein, experience and training as may be required by the board of education that will
418 enable him to become a certified teacher of bilingual education, or English as a second language
419 in the state; and (5) is legally present in the United States and possess legal authorization for
420 employment. Any waiver shall be subject to annual renewal by the commissioner; provided, that

421 the waiver may be renewed not more than 4 times. In granting a waiver under this section, the
422 commissioner shall give preference to persons who have been certified as teachers in their
423 country or place of national origin.

424 SECTION 11. Said chapter 71A, as so appearing, is hereby further amended by striking
425 out section 7 and inserting in place thereof the following section:

426 Section 7. A school district may establish, on a full or part-time basis, preschool or
427 summer school English language learners programs for limited English proficient students or
428 join with the other school districts in establishing such preschool or summer programs. Preschool
429 or summer programs shall not substitute for English language learners programs required to be
430 provided during the regular school year. A school district may establish after school programs to
431 assist limited English proficient students in developing and maintaining native language
432 proficiency.

433 SECTION 12. Notwithstanding any general or special law to the contrary, each school
434 district shall, within 5 years of the effective date of this act, have at least 1 teacher who is
435 certified in English as a second language, bilingual education or other English language learners
436 program under section 38G of chapter 71 or regulations promulgated thereto.

437 SECTION 13. Notwithstanding any general or special law to the contrary, any school
438 district with 200 or more limited English proficient students enrolled in the school system that
439 appoints a person to be its director of English language learners programs shall appoint a person
440 who is certified in English as a second language, bilingual education or other English language
441 learners program under section 38G of chapter 71 or regulations promulgate thereto.

442 SECTION 14. Notwithstanding any general or special law to the contrary, any limited
443 English proficient student, as defined in section 1 of chapter 71A of the General Laws, who was
444 enrolled in a public secondary school in the commonwealth directly from a country other than
445 the United States of America, and who was unable to achieve proficiency in the English
446 language, as determined by English proficiency assessments established under section 2B of said
447 chapter 71A, prior to leaving such public secondary school, to the extent possible shall be given
448 access to English language and literacy skill instruction courses offered through the adult basic
449 education program established under section 1H of chapter 69 of the General Laws.

450 SECTION 15. Notwithstanding any general or special law to the contrary, within 5 years
451 of the effective date of this act, if the department of education implements any foreign language
452 requirement on school districts, such requirement shall be mandatory for elementary schools.

453 SECTION 16. Sections 1 and 17 shall take effect on January 1, 2010.

454 SECTION 17. Sections 2 through 16, inclusive, and 18 through 27, inclusive, shall take
455 effect on July 1, 2010.