

SENATE No. 02050

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Diaz

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 to prevent fiscal abuse in educational collaboratives.

PETITION OF:

NAME:

Sonia Chang-Diaz

DISTRICT/ADDRESS:

Second Suffolk

SENATE No. 02050

By Ms. Chang-Diaz, a petition (subject to Joint Rule 12) of Sonia Chang-Diaz for legislation to prevent fiscal abuse in educational collaboratives. Education.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act to prevent fiscal abuse in educational collaboratives.

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

1 SECTION 1. Section 4E of chapter 40 of the General Laws, as appearing in the 2010 Official
2 Edition is hereby amended by striking out the second paragraph and inserting in place thereof the
3 following 4 paragraphs:-

4 The education collaborative shall be managed by a board of directors which shall be comprised
5 of 1 person appointed by each member school committee, 1 person appointed by each member
6 charter board of trustees and 1 person appointed by the commissioner of elementary and
7 secondary education. With the exception of the person appointed by the commissioner of
8 elementary and secondary education, all appointed persons shall be either a school committee
9 member, the superintendent of schools or a member of the charter board of trustees; provided,
10 however, that a school committee may appoint a representative other than a school committee
11 member or superintendent if necessary to ensure that the board has the appropriate mix of skills
12 and expertise, including in the areas of educational programming and services, financial controls

13 and operations and governance; provided, further, that the need for appointing a representative
14 other than a school committee member or superintendent, as well as the alternate representative's
15 qualifications, must be documented in writing and submitted to the commissioner of elementary
16 and secondary education by the representative's appointing authority prior to that
17 representative's admittance to the board. The board shall meet at least 6 times in each calendar
18 year. Each member of the board of directors shall be entitled to a vote.

19 Each member of the board of directors shall complete training within 3 months of the member's
20 appointment which shall outline the duties and responsibilities of a board member. The
21 department of elementary and second education shall develop and provide the training, with
22 input from the Massachusetts Association of School Committees, the Massachusetts Association
23 of School Superintendents and the Massachusetts Organization of Educational Collaboratives
24 and shall obtain and record a certificate of completion for each board member.

25 Board members of education collaboratives operating under this section shall file a disclosure
26 annually with the state ethics commission, which shall forward a copy of the disclosure to the
27 department of elementary and secondary education. The form of the disclosure shall be
28 prescribed by the state ethics commission and shall be signed under penalty of perjury. Such
29 form shall be limited to a statement in which the board member shall disclose any financial
30 interest that the board member or a member of the board members' immediate family, as defined
31 in section 1 of said chapter 268A, has in any education collaborative located in the
32 commonwealth or with any person doing business with any education collaborative in the
33 commonwealth; provided that, for the purposes of this section, the appointing authority of the
34 board member shall not be considered to be doing business with an education collaborative.

35 Each board member of an education collaborative shall file such disclosure for the preceding
36 calendar year with the commission within 30 days after becoming such a board member, on or
37 before September 1 of each year thereafter the person is such a board member and on or before
38 September 1 of the year after the person ceases to be such a board member; provided, however,
39 that no member of a board shall be required to file such disclosure for the year in which the
40 board member ceases to be a member of such board if the board member served fewer than 30
41 days in such year.

42 No board member or individual serving in a management capacity at an education collaborative
43 shall serve as a board member or in a management or employee capacity at a related nonprofit
44 organization. No person serving in an employee capacity at an education collaborative shall
45 serve in a management or employee capacity at a related nonprofit organization that has direct
46 financial dealings with the education collaborative at which that person works.

47 SECTION 2. Said section 4E of said chapter 40, as so appearing, is hereby further amended by
48 striking out the third paragraph and inserting in place thereof the following two paragraphs:-

49 The board of elementary and secondary education shall promulgate regulations setting forth the
50 approval process for education collaboratives. The board of elementary and secondary education
51 shall establish requirements for the written agreement which shall form the basis of the education
52 collaborative. The written agreement shall include, but not be limited to: (1) the purposes of the
53 program or service; (2) the financial terms and conditions of membership of the education
54 collaborative; (3) the method of termination of the education collaborative and of the withdrawal
55 of member school committees; (4) the procedure for admitting new members and for amending
56 the collaborative agreement; (5) the powers and duties of the board of directors of the education

57 collaborative to operate and manage the education collaborative; and (6) any other matter which
58 the member committees deem advisable. The written agreement, and any amendments to the
59 agreement, shall be subject to the written approval of the member school committees, the
60 member charter boards of trustees and the commissioner of elementary and secondary education.
61 Failure to obtain approval for amendments to the written agreement shall render such
62 amendments invalid. Each education collaborative shall keep a copy of the written agreement,
63 including any amendments thereto, and the written approvals of the member school committees,
64 the member charter boards of trustees and the commissioner of elementary and secondary
65 education. The board of elementary and secondary education may revoke a collaborative's
66 approval if the collaborative has not fulfilled any conditions imposed by the board or the
67 commissioner in connection with the approval or the collaborative has violated any provision of
68 its agreement. The commissioner of elementary and secondary education may place the
69 collaborative on a probationary status to allow the implementation of a remedial plan after
70 which, if the plan is unsuccessful, the approval may be summarily revoked.

71 The board of elementary and secondary education may maintain a written policy on education
72 collaboratives consistent with this section. As long as the policy remains in effect, the board of
73 elementary and secondary education shall update the policy at least once every 5 years.

74 SECTION 3. Said section 4E of said chapter 40, as so appearing, is hereby further amended by
75 adding the following sentence to the end of the fourth paragraph:-

76 The board of elementary and secondary education shall issue regulations prescribing guidelines
77 on the retention of surplus money in the fund.

78 SECTION 4. Said section 4E of said chapter 40, as so appearing, is hereby further amended by
79 striking out the second sentence in the ninth paragraph and inserting in place thereof the
80 following sentence:-

81 No person shall be eligible for employment by said board of directors as an instructor of children
82 with severe special needs, teacher of children with special needs, teacher, guidance counselor,
83 school psychologist, school adjustment counselor, school social worker, school nurse, library
84 media specialist, school business administrator, principal, supervisor, or director unless such
85 person has been granted a certificate by the board of education under the provisions of section
86 thirty-eight G of chapter seventy-one or section six of chapter seventy-one A or an approval
87 under the regulations promulgated by the board of education under chapter seventy-one B or
88 chapter seventy-four with respect to the type of position for which he seeks employment;
89 provided, however, that nothing herein shall be construed to prevent a board of directors of an
90 education collaborative from prescribing additional qualifications; provided, further, that nothing
91 herein shall be construed to prevent the board of elementary and secondary education from
92 requiring individuals in other employment categories to meet certification requirements
93 consistent with the provisions of section thirty-eight G of chapter seventy-one or section six of
94 chapter seventy-one A or an approval under the regulations promulgated by the board of
95 education under chapter seventy-one B or chapter seventy-four.

96 SECTION 5. Said section 4E of said chapter 40, as so appearing, is hereby further amended by
97 adding the following 10 paragraphs:-

98 Each education collaborative shall submit to the commissioner of elementary and secondary
99 education, to each member school committee, to each member charter board of trustees and to

100 each parent or guardian of its enrolled students an annual report. The annual report shall be
101 issued not later than August 1 for the preceding school year. The annual report shall be in such
102 form as may be prescribed by the board of elementary and secondary education and shall include
103 at least the following components: (1) discussion of progress made toward the achievement of
104 the purposes set forth in the written agreement; and (2) a financial statement based on the most
105 recent audited financial statement submitted to the board members' appointing authorities,
106 setting forth, by appropriate categories, the revenue and expenditures for the fiscal year covered
107 by the audited financial statement.

108 Each education collaborative shall keep an accurate account of all its activities and all its receipts
109 and expenditures, including hard copy or electronic receipts of all expenditures greater than 5
110 dollars, and shall annually cause an independent audit to be made of its accounts. The audit shall
111 result in an audited financial statement prepared in accordance with such generally accepted
112 accounting principles and reporting practices as may from time to time be prescribed by the
113 American Institute of Certified Public Accountants, or its successor organization and examined
114 by an independent certified public accountant in accordance with generally accepted auditing
115 standards for the purpose of expressing an opinion on the audit. The audited financial statement
116 shall include, but not be limited to, detailed information in each of the following areas: (1)
117 transactions between the education collaborative and a related nonprofit organization; (2)
118 transactions or contracts related to real property, rentals or lease agreements; (3) salary changes
119 made to employees of the education collaborative and changes in employment responsibilities
120 that accompanied the salary change; (4) the percentage of the education collaborative's budget
121 spent on administrative expenses; (5) any accounts held by the collaborative that may be
122 discretionarily spent by another person or entity; and (6) the division of costs and expenditures

123 for services for individuals under age 22 and individuals age 22 and above. The state auditor
124 shall develop a form to be used as part of the independent audit to ensure compliance with this
125 section.

126 Each member of the education collaborative board shall present the audited financial statement
127 to the member's appointing school committee, charter board of trustees or state authority within
128 9 months of the end of the collaborative's fiscal year. Each collaborative board member shall
129 certify in writing whether that member has read and reviewed the audited financial statement
130 and whether, to the best of the board member's understanding and knowledge, the audited
131 financial statement is complete; provided, however, that if the board member believes that the
132 audited financial statement is incomplete or inaccurate, the board member shall notify the
133 collaborative, the appointing school committee or charter board of trustees and the commissioner
134 of elementary and secondary education within 7 days of becoming aware of its incompleteness or
135 inaccuracy. Each board member's written certification shall be kept on file by the board
136 member's appointing authority.

137 The commissioner of elementary and secondary education, each member school committee and
138 each member charter board of trustees shall certify receipt of the audited financial statement to
139 the state auditor within 45 days of receiving the statement provided that the certification shall
140 state whether the audited financial statement is complete and in compliance with the
141 requirements of this section. The department of elementary and secondary education may
142 develop an interdepartmental service agreement with the state auditor or the operational services
143 division to assist in reviewing financial components of these audits. The state auditor or
144 operational services division may investigate the budget and finances of education collaboratives
145 and their financial dealings, transactions and relationships and shall have the power to examine

146 the records of education collaboratives and to prescribe methods of accounting and the rendering
147 of periodic reports. The department of elementary and secondary education shall also be
148 responsible for making the audited financial statement publicly available in a machine readable
149 format through a searchable online database; provided, however, that the department may
150 designate the state agency with whom the department enters into an interdepartmental service
151 agreement as the party responsible for making the audited financial statement publicly available.
152 The database shall allow users to view information in aggregated and disaggregated forms and
153 shall allow users to easily compare information across collaboratives. If the audited financial
154 statement is not filed within 9 months of the end of the collaborative's fiscal year, the
155 commissioner of elementary and secondary education shall notify the state auditor and the
156 commissioner may suspend the education collaborative's authorization to operate, effective
157 either at the close of the current school year or at such time as the commissioner deems prudent.

158 Upon the review of an education collaborative's audited financial statement, the commissioner of
159 elementary and secondary education shall notify the state auditor of any irregularities. Member
160 school committees and member boards of trustees shall also report to the state auditor any
161 irregularities. The board of elementary and secondary education shall promulgate guidelines
162 governing the review of audited financial statements and the types of irregularities warranting
163 notification to the state auditor by the department of elementary and secondary education,
164 member school committees and member boards of trustees.

165 The trustee, trustees or governing board of any related nonprofit organization shall file a copy of
166 the annual written report for the preceding fiscal year as required under section 8F of chapter 12,
167 including all attachments and schedules, with the commissioner of elementary and secondary
168 education within 10 days of filing said report with the attorney general; provided that any related

169 nonprofit organization not required to submit a complete audited financial statement under
170 section 8F of chapter 12 shall file a copy of said statement with the commissioner of elementary
171 and secondary education within 9 months of the end of the related nonprofit organization's fiscal
172 year. The audited financial statement shall be prepared in accordance with such generally
173 accepted accounting principles and reporting practices as may from time to time be prescribed by
174 the American Institute of Certified Public Accountants, or its successor organization and shall be
175 examined by an independent certified public accountant in accordance with generally accepted
176 auditing standards for the purpose of expressing an opinion on the audited financial statement.

177 The board of elementary and secondary education shall promulgate regulations to ensure that
178 education collaboratives enter into agreements only with related nonprofit organizations that are
179 able to implement their stated goals in a manner that is cost effective and promotes transparency.

180 Said regulations shall include, but are not limited to, restricting payments by an education
181 collaborative to a related nonprofit organization whose administrative costs exceed a specified
182 percentage of the organization's total budget and restricting payments by an education
183 collaborative to a related nonprofit organization whose revenues attributable to an educational
184 collaborative exceed a specified percentage of the organization's total revenues.

185 Every contract for the procurement of supplies, services or real property and for disposing of
186 supplies or real property entered into by an education collaborative shall be subject to chapter
187 30B of the General Laws.

188 Each education collaborative shall be reviewed by the department of elementary and secondary
189 education on a periodic basis, but not less frequently than every 6 years. Such review shall
190 include, but not be limited to, compliance with the written agreement and any conditions

191 imposed by the board of elementary and secondary education, and with the requirements of this
192 section and any other applicable state and federal laws and regulations.

193 For the purposes of this section, the term “Related nonprofit organization” shall mean a nonprofit
194 organization established under the laws of the commonwealth or any other state: (i) a primary
195 purpose of which is to benefit or further the purposes of an education collaborative or that, on
196 average over a 3-year period, receives more than 50 per cent of its funding from 1 or more
197 education collaboratives; and (ii) which engages in business transactions or business
198 arrangements, including pledges or assignments of collateral and loan guarantees or other
199 contracts of suretyship, with the education collaborative.

200 SECTION 6. Section 5 of chapter 268A of the General Laws, as so appearing, is hereby
201 amended by inserting after subsection (e) the following subsection:-

202 (e 1/2) a former board member or individual serving in a management capacity at an education
203 collaborative, established pursuant to section 4E of chapter 40, who accepts employment with a
204 related nonprofit organization, as defined in section 4E of chapter 40, for a period of 1 year after
205 the individual leaves the education collaborative, or

206 SECTION 7. The board of elementary and secondary education shall update its policy on
207 education collaboratives to ensure consistency with this act and current rules and practice. The
208 update shall be completed by June 30, 2012.

209 SECTION 8. (a) Notwithstanding any general or special law to the contrary, each education
210 collaborative shall prepare a report of all services it provides to individuals not enrolled in or
211 employed by elementary or secondary schools in the commonwealth. This report shall include:
212 (1) the scope of services provided to individuals not enrolled in or employed by elementary or

213 secondary schools in the commonwealth; (2) the cost of and revenue source for these services;
214 and (3) referral and enrollment procedures for these services. Each collaborative shall complete
215 its report by March 1, 2012 and file it with the commissioner of elementary and secondary
216 education, the commissioner of developmental services, the state auditor, the attorney general,
217 the house and senate chairs of the joint committee on education, the house and senate chairs of
218 the joint committee on children, families and persons with disabilities and the chairs of the house
219 and senate committees on ways and means.

220 (b) There shall be a special commission to investigate services provided by education
221 collaboratives and related nonprofit organizations, as that term is defined in section 4E of chapter
222 40 of the General Laws, to individuals not enrolled in or employed by elementary or secondary
223 schools in the commonwealth. The commission shall consist of the commissioner of elementary
224 and secondary education or a designee, who shall serve as the chair; the commissioner of
225 developmental services or a designee; the state auditor or a designee; the attorney general or a
226 designee; the house and senate chairs of the joint committee on education; the house and senate
227 chairs of the joint committee on children, families and persons with disabilities; an advocate for
228 developmentally disabled individuals selected by the commissioner of developmental disabilities
229 from a list of 3 persons nominated jointly by The Arc of Massachusetts and the Association of
230 Developmental Disabilities Providers; and a parent of an individual with special needs age 22 or
231 above selected by the commissioner of developmental disabilities from a list of 3 persons
232 nominated jointly by The Arc of Massachusetts and the Association of Developmental
233 Disabilities Providers. The investigation shall include, but not be limited to:

234 (1) whether education collaboratives are appropriate settings for providing services to individuals
235 with special needs age 22 and above;

236 (2) what certification procedures would be appropriate for education collaboratives and related
237 nonprofit organizations, as that term is defined in section 4E of chapter 40 of the General Laws,
238 that provide services for individuals not enrolled in or employed by elementary or secondary
239 schools in the commonwealth;

240 (3) what measures should be taken to ensure proper accounting of and funding for all services
241 provided by education collaboratives and related nonprofit organizations, as that term is defined
242 in section 4E of chapter 40 of the General Laws, for individuals not enrolled in or employed by
243 elementary or secondary schools in the commonwealth; and

244 (4) other methods for promoting cost-effective delivery of services to individuals with special
245 needs age 22 and above.

246 The commission shall report on its activities, findings and recommendations to the clerks of the
247 house and senate not later than June 30, 2012.

248 SECTION 9. There shall be a special commission to study and make recommendations on the
249 appropriate role and organizational structure of education collaboratives in the commonwealth.
250 The recommendations of the commission shall address the advisability of modifying the role of
251 education collaboratives and, in the event of modification, the appropriate responsibilities,
252 limitations, and organizational structure of education collaboratives.

253 The commission shall consist of 11 members: the commissioner of elementary and secondary
254 education or his designee, who shall serve as co-chair; the executive director of the
255 Massachusetts Organization of Educational Collaboratives or a designee, who shall serve as co-
256 chair; the secretary of education or a designee; and 8 persons to be appointed by the secretary of
257 education, 2 of whom shall serve as executive directors of education collaboratives of varying

258 size in the commonwealth, 2 of whom shall be selected from a list of 4 persons nominated by the
259 Massachusetts Association of School Committees, 2 of whom shall be selected from a list of 4
260 persons nominated by the Massachusetts Association of School Superintendents, 1 of whom
261 shall be selected from a list of 3 persons nominated by the Massachusetts Teachers Association
262 and 1 of whom shall be selected from a list of 3 persons nominated by the American Federation
263 of Teachers, Massachusetts.

264 The commission shall conduct its first meeting not less than 30 days after the effective date of
265 this act and shall issue its final report to the senate and house chairs of the joint committee on
266 education, the chairs of the senate and house committees on ways and means and the clerks of
267 the senate and house of representatives on the results of its study and its recommendations,
268 together with drafts of legislation necessary to carry out such recommendations, not later than
269 September 1, 2012.

270 SECTION 10. Section 8 of this act shall take on February 1, 2012.