

***SENATE . . . . . No. 02105***

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The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve.  
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An Act relative to improving accountability and oversight of education collaboratives.

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

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

SECTION 1. Chapter 40 of the General Laws is hereby amended by striking out section 4E, as appearing in the 2010 Official Edition, and inserting in place thereof the following section:-

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

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

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

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

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

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

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

“Superintendent”, the superintendent of the district.

(b) Two or more school committees of cities, towns and regional school districts and boards of trustees of charter schools may enter into a written agreement to provide shared programs and services, including instructional, administrative, facility, community or any other services; provided that a primary purpose of such programs and services shall be to complement the educational programs of member school committees and charter schools in a cost-effective manner. The association of school committees and charter school boards which is formed to deliver the programs and services shall be known as an education collaborative.

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

Each collaborative board member shall complete training on the roles and responsibilities of the member’s office within 60 days of the member's appointment. Said training shall include, but not be limited to, a review of the open meeting law, public

records law, conflict of interest law, special education law, the budgetary process and the fiduciary and management oversight responsibilities of board members. The department shall develop and provide the training with input from relevant stakeholders. The department shall promulgate regulations relative to the certification of completion of said training.

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

The board of directors of the education collaborative shall establish and manage a fund, to be known as an education collaborative fund, and each such fund shall be designated by an appropriate name. All monies contributed by the member municipalities and charter schools and all grants or gifts from the federal government, state government, charitable foundations, private corporations or any other source shall be paid to the board of directors of the education collaborative and deposited in the fund.

The board of directors of the education collaborative shall appoint a treasurer who may be a treasurer of a city, town or regional school district belonging to the collaborative. The treasurer may, subject to the direction of the board of directors of the education collaborative, receive and disburse all money belonging to the collaborative without further appropriation. The treasurer shall give bond annually for the faithful performance of duties as collaborative treasurer in a form approved by the department of revenue and in a sum not less than the amount established by the department, as shall be fixed by the board of directors of the education collaborative. The board of directors of

the education collaborative may pay reasonable compensation to the treasurer for services rendered. No member of the board of directors or employee of the education collaborative shall be eligible to serve as treasurer of the collaborative.

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

The board of directors of an education collaborative may borrow money, enter into long-term or short-term loan agreements or mortgages and apply for state, federal or corporate grants or contracts to obtain funds necessary to carry out the purpose for which such collaborative is established; provided, however, that the board of directors has determined that any borrowing, loan or mortgage is cost-effective and in the best interest of the collaborative and its member municipalities and charter schools. The borrowing, loans or mortgages shall be consistent with the written agreement and articles of incorporation of the education collaborative and shall be consistent with standard lending practices. The board of directors of an education collaborative shall notify each member school committee and charter school board within 30 calendar days of applying for real estate mortgages.

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

Each board of directors of an education collaborative shall annually prepare financial statements, including: (1) a statement of net assets; (2) a statement of revenues,

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

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

The department shall also be responsible for making information from the audits publicly available online, in human readable and machine readable formats; provided, however, that the department may designate the state agency with whom the department enters into an interdepartmental service agreement as the party responsible for making such information publicly available online.

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

The executive director of each education collaborative shall annually present the annual report and its budget to each member school committee in a school committee meeting or charter school board of trustees, and accept questions regarding the report and budget; provided, however, that an education collaborative with more than 10 school districts may make the presentation in regional presentations to not more than 5 member school committees at a time; provided, further, that a school committee or charter school board of trustees may waive its right to such a presentation. Two or more school committees of cities, towns and regional school districts and boards of trustees of charter schools may receive such a presentation in a joint meeting.

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

The board of directors of the education collaborative shall be considered to be a public employer and may employ personnel, including teachers, to carry out the purposes and functions of the education collaborative. No person shall be eligible for employment by the education collaborative in a position that is covered by section 38G of chapter 71 unless the person has been granted a certificate by the commissioner under said section 38G of said chapter 71 or an approval under the regulations promulgated by the board of elementary and secondary education under chapter 74 with respect to the type of position for which the person seeks employment; provided, however, that nothing in this subsection shall be construed to prevent a board of directors of an education collaborative from prescribing additional qualifications. A board of directors of an education collaborative may, upon its request, be exempted by the commissioner for any 1 school year from the requirements of this section to employ certified or approved personnel when compliance with this subsection would in the opinion of the commissioner constitute a great hardship. No employee of an education collaborative shall be employed at any related for-profit or non-profit organization. The board of the directors of an education collaborative shall appoint 1 or more registered nurses, subject to certification as a school nurse under said section 38G of said chapter 71, and shall provide such school nurse with all proper facilities for the performance of the school nurse's duties. The education collaborative shall consider and meet the staffing level required to address the specific health care needs of the students enrolled in the education collaborative. Nothing in this section shall prohibit a member of the board of directors or employee of an education collaborative from providing volunteer services to a related for-profit or non-profit organization.

(g) The trustee, trustees or governing board of any related for-profit or non-profit organization shall file a copy of the annual written report for the preceding fiscal year as

required under section 8F of chapter 12, including all attachments and schedules, with the commissioner within 10 days of filing said report with the attorney general; provided that any related for-profit or non-profit organization not required to submit a complete audited financial statement under section 8F of chapter 12 shall file a copy of said statement with the commissioner by January 1 for the preceding fiscal year. The audited financial statement shall be prepared and examined by an independent certified public accountant in accordance with generally accepted auditing standards for the purpose of expressing an opinion on the audited financial statement.

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

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

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

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

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

(l) Upon receipt of information regarding an education collaborative which, in the opinion of the commissioner, indicates the presence of circumstances at the collaborative

that impede its viability or demonstrate deficiencies in programmatic quality or significant malfeasance, financial or otherwise, by any board member or employee of the collaborative, the commissioner may place such collaborative on probationary status to allow the implementation of a remedial plan. If such plan is unsuccessful, the commissioner may direct school districts and charter schools to withhold payments of public funds to the collaborative, and may, in consultation with the secretary of administration and finance, withhold state funds being directed to the collaborative; provided further that the board of elementary and secondary education may suspend or revoke for cause the written agreement of an education collaborative upon the recommendation of the commissioner. Any withholding of funds that occurs under this paragraph shall conclude when the commissioner finds and communicates in writing to the member school committees and member charter school boards that sufficient corrective actions are being taken by the collaborative to address the concerns that resulted in the withholding of funds.

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

SECTION 2. The department of elementary and secondary education shall develop a model collaborative agreement that addresses the requirements and standards for approval within 6 months of the effective date of this act. The model agreement, which may be used by existing or future education collaboratives formed under section 4E of chapter 40 of the General Laws, shall be made available on the department's website.

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

SECTION 4. An education collaborative formed under section 4E of chapter 40 of the General Laws shall not provide services to individuals over the age of 22; provided, however, that an education collaborative or a related for-profit or non-profit organization providing services to individuals over the age of 22 prior to the effective date of this act may continue the provision of such services; provided further, that a related for-profit or non-profit organization providing services to individuals over the age



of 22 prior to the effective date of this act, may transfer the provision of such services to the education collaborative to which it is related and the education collaborative may continue the provision of such services after such transfer.

SECTION 4A. The department of elementary and secondary education shall study the feasibility of conducting, at least once every 5 years, a review of chapter 766 approved in-state schools and programs that serve publicly-funded special education students; provided, that the review would include, but not be limited to, a consideration of the tuition and funding for chapter 766-approved in-state schools and the salaries paid by these schools in relation to the salaries paid to special education staff in public schools, including education collaboratives. The department shall report its findings not later than June 1, 2012, to the clerks of the senate and house of representatives.

SECTION 5. There shall be a special commission to study the role of education collaboratives. The commission shall consist of 13 members: the house and senate chairs of the joint committee on education, or designees, who shall serve as co-chairs of the commission; the senate minority leader, or designee; the house minority leader, or designee; the secretary of education, or designee; the commissioner of elementary and secondary education, or designee; the secretary of health and human services, or designee; a representative of the Federation for Children with Special Needs, Inc.; a representative of Massachusetts Administrators for Special Education; 1 representative from the Massachusetts Association of 766 Approved Private; and 3 persons to be appointed by the secretary of education, 1 of whom shall be selected from a list of 3 persons nominated by the Massachusetts Association of School Superintendents, Inc., 1 of whom shall be selected from a list of 3 persons nominated by the Massachusetts Association of School Committees, Inc. and 1 of whom shall be selected from a list of 3 persons nominated by the Massachusetts Organization of Educational Collaboratives.

The commission shall examine, report and make recommendations on topics including, but not limited to: (1) whether a statewide network of education collaboratives should be established to implement new programs and provide technical assistance in partnership with the department of elementary and secondary education, and if so, how such network should be organized and funded; (2) whether education collaboratives are appropriate settings for providing programs and services to developmentally disabled adults over the age of 22, and if so, what measures should be taken to ensure proper accounting of, and funding for, all services provided by education collaboratives and related for-profit and non-profit organizations, as that term is defined in section 4E of chapter 40 of the General Laws, for individuals not enrolled in or employed by elementary or secondary schools in the commonwealth; (3) how to maximize the efficiency and capacity of existing education collaboratives; (4) the appropriate role and relationship, if any, between education collaboratives and related for-profit and non-profit organizations; (5) appropriate compensation levels and authority of collaborative

management employees; (6) the merits of merging or consolidating existing education collaboratives, including the effect on collective bargaining agreements, staff, operational systems and debt obligations and whether districts and students would benefit from the merger of existing education collaboratives; (7) the provision of non-education related services by education collaboratives to other government entities and the appropriateness and effect of those provisions on the core mission and purpose of the collaborative; (8) the efficiency and effectiveness of the special education programs at education collaboratives as compared to other public schools as well as approved private special educational schools that serve publicly funded special education students, with additional focus on the establishing tuition and funding provided to approved private special educational schools that serve publicly funded public education students, comparing funding of private special educational schools that serve publicly funded special education students with other public school funding, including consideration of the salary of employees at approved private special educational schools in relation to the salaries paid to special education staff in the commonwealth's public schools; and (9) a methodology to assess applicable pension liability to, and determine the funding obligations of, education collaboratives related to their employees' membership in the State Employees' Retirement System and Teachers Retirement System developed in consultation with the State Retirement Board, the State Teachers' Retirement Board and the public employee retirement administration commission.

The commission shall consult with and solicit input from various persons and groups, including, but not limited to: the attorney general; the state auditor; the inspector general; the department of developmental services; the division of local services; the executive directors of education collaboratives of varying size and scope in the commonwealth; the chairs of the joint committee on children, families and persons with disabilities; organizations representing individuals with developmental disabilities, including the Arc of Massachusetts and the Association of Developmental Disabilities Providers, Inc.; organizations representing children with disabilities and their parents; and associations representing special education administrators and other educational administrators, school business officers, municipal officials and charter schools.

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

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