HOUSE . . . . . No. 3889

Text of an amendment recommended by the committee on Ways and Means to the Senate Bill relative to improving accountability and oversight of education collaboratives (Senate, No. 2105).

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

An Act relative to improving accountability and oversight of education collaboratives .

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 pursuant to 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.

21 “Superintendent", the superintendent of the district.

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

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

46 Each collaborative board member shall complete training provided by the department on
47 the roles and responsibilities of the member’s office within 60 days of the member's
48 appointment. Said training shall include, but not be limited to, a review of the open meeting law,
49 public records law, conflict of interest law, special education law, the budgetary process and the
50 fiduciary and management oversight responsibilities of board members. The department shall
51 develop the training with input from relevant stakeholders and shall promulgate regulations
52 relative to the certification of completion of said training.

53 The written agreement which shall form the basis of the education collaborative shall set
54 forth the following: (1) the mission, purpose and focus of the collaborative; (2) the program or
55 service to be offered by the collaborative; (3) the financial terms and conditions of membership
56 of the education collaborative, including a limit on the amount of cumulative surplus revenue
57 that may be held by the collaborative at the end of a fiscal year; (4) the detailed procedure for the
58 preparation and adoption of an annual budget; (5) the method of termination of the education

59 collaborative and of the withdrawal of member school committees and charter school boards; (6)
60 the procedure for admitting new members and for amending the collaborative agreement; (7) the
61 powers and duties of the board of directors of the education collaborative to operate and manage
62 the education collaborative; and (8) any other matter not incompatible with law which the
63 member school committees and charter school boards consider advisable. No agreement nor
64 subsequent amendments shall take effect unless approved by the member school committees and
65 member charter school boards and by the board of elementary and secondary education upon the
66 recommendation of the commissioner. A member school committee or member charter school
67 board shall not delegate the authority to approve amendments to the collaborative agreement to
68 any other person or entity. Each education collaborative, each member school committee or
69 member charter school board and the department shall maintain a copy of the collaborative
70 agreement, including any amendments to the agreement.

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

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

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

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

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

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

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

134 The audited financial statements, accompanying notes and supplemental schedules shall
135 disclose: (1) transactions between the education collaborative and any related for-profit or non-

136 profit organization; (2) transactions or contracts related to the purchase, sale, rental or lease of
137 real property; (3) the names, duties and total compensation of the 5 most highly compensated
138 employees; (4) the amounts expended on administration and overhead; (5) any accounts held by
139 the collaborative that may be spent at the discretion of another person or entity; (6) the amounts
140 expended on services for individuals age 22 and older; and (7) any other items as may be
141 required by regulation.

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

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

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

160 The board of directors of the education collaborative shall be considered to be a public
161 employer and may employ personnel, including teachers, to carry out the purposes and functions
162 of the education collaborative. No person shall be eligible for employment by the education
163 collaborative as an instructor of children with severe special needs, teacher of children with
164 special needs, teacher, guidance counselor, school psychologist, adjustment counselor, social
165 worker, library media specialist, principal, supervisor, director, administrator of special
166 education, assistant superintendent of schools or superintendent of schools unless the person has
167 been granted a certificate by the commissioner under said section 38G of said chapter 71 or an
168 approval under the regulations promulgated by the board of elementary and secondary education
169 under chapter 74 with respect to the type of position for which the person seeks employment;
170 provided, however, that nothing in this subsection shall be construed to prevent a board of
171 directors of an education collaborative from prescribing additional qualifications. A board of
172 directors of an education collaborative may, upon its request, be exempted by the commissioner
173 for any 1 school year from the requirements of this section to employ certified or approved

174 personnel when compliance with this subsection would in the opinion of the commissioner
175 constitute a great hardship. No employee of an education collaborative shall be employed at any
176 related for-profit or non-profit organization. Nothing in this section shall prohibit a member of
177 the board of directors or employee of an education collaborative from providing volunteer
178 services to a related for-profit or non-profit organization.

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

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

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

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

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

207 (k) The department shall, at least once every 6 years, review and evaluate the programs
208 and services provided by each education collaborative. Such review shall, at a minimum, assess
209 compliance with the written agreement and any conditions imposed by the board of elementary

210 and secondary education, and with the requirements of this section and any other applicable state
211 and federal laws and regulations.

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

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

233 SECTION 2. The department of elementary and secondary education shall develop a
234 model collaborative agreement that addresses the requirements and standards for approval within
235 6 months of the effective date of this act. The model agreement, which may be used by existing
236 or future education collaboratives formed under section 4E of chapter 40 of the General Laws,
237 shall be made available on the department's website.

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

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

247 provision of such services; provided further, that a related for-profit or non-profit organization
248 providing services to individuals over the age of 22 prior to the effective date of this act, may
249 transfer the provision of such services to the education collaborative to which it is related and the
250 education collaborative may continue the provision of such services after such transfer.

251 SECTION 5. There shall be a special commission to study the role of education
252 collaboratives. The commission shall consist of 11 members: the house and senate chairs of the
253 joint committee on education, or designees, who shall serve as co-chairs of the commission; the
254 senate minority leader, or designee; the house minority leader, or designee; the secretary of
255 education, or designee; the commissioner of elementary and secondary education, or designee; a
256 representative nominated jointly by the Federation for Children with Special Needs, Inc.,
257 Massachusetts Advocates for Children and the Disability Law Center; a representative of
258 Massachusetts Administrators for Special Education; and 3 persons to be appointed by the
259 secretary of education, 1 of whom shall be selected from a list of 3 persons nominated by the
260 Massachusetts Association of School Superintendents, Inc., 1 of whom shall be selected from a
261 list of 3 persons nominated by the Massachusetts Association of School Committees, Inc. and 1
262 of whom shall be selected from a list of 3 persons nominated by the Massachusetts Organization
263 of Educational Collaboratives.

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

283 The commission shall consult with and solicit input from various persons and groups,
284 including, but not limited to: the attorney general; the state auditor; the inspector general; the
285 department of developmental services; the division of local services; the executive directors of

286 education collaboratives of varying size and scope in the commonwealth; the chairs of the joint
287 committee on children, families and persons with disabilities; organizations representing
288 individuals with developmental disabilities, including the Arc of Massachusetts and the
289 Association of Developmental Disabilities Providers, Inc.; organizations representing children
290 with disabilities and their parents; and associations representing special education administrators
291 and other educational administrators, school business officers, municipal officials and charter
292 schools.

293 The first meeting of the commission shall take place within 60 days after the effective
294 date of this act. The commission shall file a report containing its recommendations, including
295 legislation and regulations necessary to carry out its recommendations, with the clerks of the
296 house and senate not later than 12 months following the first meeting of the commission.

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