SENATE . . . . . No. 2101

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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 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

17 collaboratives; or (ii) a primary purpose of which is to benefit or further the purposes of an
18 education collaborative and which engages in business transactions or business arrangements,
19 including pledges or assignments of collateral and loan guarantees or other contracts of
20 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 board of trustees. 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.

44 Each collaborative board member shall complete training on the roles and responsibilities
45 of the member’s office within 30 days of the member's appointment. Said training shall include,
46 but not be limited to, a review of the open meeting law, public records law, conflict of interest
47 law, special education law, the budgetary process and the fiduciary and management oversight
48 responsibilities of board members. The department shall develop, and provide the training with
49 input from relevant stakeholders. The department shall promulgate regulations relative to the
50 certification of completion of said training.

51 The written agreement which shall form the basis of the education collaborative shall set
52 forth the following: (1) the mission, purpose and focus of the collaborative; (2) the program or
53 service to be offered by the collaborative; (3) the financial terms and conditions of membership

54 of the education collaborative, including a limit on the amount of cumulative surplus revenue
55 that may be held by the collaborative at the end of a fiscal year; (4) the detailed procedure for the
56 preparation and adoption of an annual budget; (5) the method of termination of the education
57 collaborative and of the withdrawal of member school committees and charter school boards; (6)
58 the procedure for admitting new members and for amending the collaborative agreement; (7) the
59 powers and duties of the board of directors of the education collaborative to operate and manage
60 the education collaborative; and (8) any other matter not incompatible with law which the
61 member school committees and charter school boards consider advisable. No agreement nor
62 subsequent amendments shall take effect unless approved by the member school committees and
63 member charter school boards and by the board of elementary and secondary education upon the
64 recommendation of the commissioner. A member school committee or member charter school
65 board shall not delegate the authority to approve amendments to the collaborative agreement to
66 any other person or entity. Each education collaborative, each member school committee or
67 member charter school board and the department shall maintain a copy of the collaborative
68 agreement, including any amendments to the agreement.

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

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

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

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

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

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

130 of the operational services division, in accordance with the requirements of said section 22N of
131 said chapter 7.

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

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

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

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

158 The board of directors of the education collaborative shall be considered to be a public
159 employer and may employ personnel, including teachers, to carry out the purposes and functions
160 of the education collaborative. No person shall be eligible for employment by the education
161 collaborative in a position that is covered by section 38G of chapter 71 unless the person has
162 been granted a certificate by the commissioner under section 38G of chapter 71 or an approval
163 under the regulations promulgated by the board of elementary and secondary education under
164 chapter 74 with respect to the type of position for which the person seeks employment; provided,
165 however, that nothing in this subsection shall be construed to prevent a board of directors of an
166 education collaborative from prescribing additional qualifications. A board of directors of an

167 education collaborative may, upon its request, be exempted by the commissioner for any 1
168 school year from the requirements of this section to employ certified or approved personnel
169 when compliance with this subsection would in the opinion of the commissioner constitute a
170 great hardship. No employee of an education collaborative shall be employed at any related for-
171 profit or non-profit organization.

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

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

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

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

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

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

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

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

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

226 SECTION 2. The department of elementary and secondary education shall develop a
227 model collaborative agreement that addresses the requirements and standards for approval within
228 6 months of the effective date of this act. The model agreement, which may be used by existing
229 or future education collaboratives formed under section 4E of chapter 40 of the General Laws,
230 shall be made available on the department's website.

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

236 SECTION 4. An education collaborative formed under section 4E of chapter 40 of the
237 General Laws shall not provide services to individuals over the age of 22 unless the commission
238 established under section 5 of this act has issued a determination otherwise; provided, however,

239 that an education collaborative providing services to individuals over the age of 22 prior to the
240 effective date of this act may continue the provision of such services.

241 SECTION 5. There shall be a special commission to study the role of education
242 collaboratives. The commission shall consist of 10 members: the house and senate chairs of the
243 joint committee on education, or designees, who shall serve as co-chairs of the commission; the
244 secretary of education, or designee; the commissioner, or designee; the secretary of health and
245 human services, or designee; a representative of the Federation for Children with Special Needs;
246 a representative of Massachusetts Administrators of Special Education; and 3 persons to be
247 appointed by the secretary of education, 1 of whom shall be selected from a list of 3 persons
248 nominated by the Massachusetts Association of School Superintendents, 1 of whom shall be
249 selected from a list of 3 persons nominated by the Massachusetts Association of School
250 Committees, and 1 of whom shall be selected from a list of 3 persons nominated by the
251 Massachusetts Organization of Education Collaboratives.

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

271 The commission shall consult with and solicit input from various persons and groups,
272 including, but not limited to: the attorney general's office; the state auditor's office; the inspector
273 general's office; the department of developmental services; the division of local services; the
274 executive directors of education collaboratives of varying size and scope in the commonwealth;
275 teachers from education collaboratives of varying size and scope in the commonwealth; the
276 chairs of the joint committee on children, families and persons with disabilities; organizations
277 representing individuals with developmental disabilities, including the Arc of Massachusetts and

278 the Association of Developmental Disability Providers; organizations representing children with
279 disabilities and their parents; and associations representing special education administrators and
280 other educational administrators, school business officers, municipal officials and charter
281 schools.

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

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