

SENATE No. 2050

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 adoption of the accompanying bill:

An Act to prevent fiscal abuse in educational collaboratives.

PETITION OF:

NAME:

Sonia Chang-Diaz

DISTRICT/ADDRESS:

SENATE No. 2050

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
2 Official Edition is hereby amended by striking out the second paragraph and inserting in place
3 thereof the following 4 paragraphs:-

4 The education collaborative shall be managed by a board of directors which shall be
5 comprised of 1 person appointed by each member school committee, 1 person appointed by each
6 member 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

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

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

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

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

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

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

The board of elementary and secondary education shall promulgate regulations setting forth the approval process for education collaboratives. The board of elementary and secondary education shall establish requirements for the written agreement which shall form the basis of the education collaborative. The written agreement shall include, but not be limited to: (1) the purposes of the program or service; (2) the financial terms and conditions of membership of the education collaborative; (3) the method of termination of the education collaborative and of the

57 withdrawal of member school committees; (4) the procedure for admitting new members and for
58 amending the collaborative agreement; (5) the powers and duties of the board of directors of the
59 education collaborative to operate and manage the education collaborative; and (6) any other
60 matter which the member committees deem advisable. The written agreement, and any
61 amendments to the agreement, shall be subject to the written approval of the member school
62 committees, the member charter boards of trustees and the commissioner of elementary and
63 secondary education. Failure to obtain approval for amendments to the written agreement shall
64 render such amendments invalid. Each education collaborative shall keep a copy of the written
65 agreement, including any amendments thereto, and the written approvals of the member school
66 committees, the member charter boards of trustees and the commissioner of elementary and
67 secondary education. The board of elementary and secondary education may revoke a
68 collaborative's approval if the collaborative has not fulfilled any conditions imposed by the
69 board or the commissioner in connection with the approval or the collaborative has violated any
70 provision of its agreement. The commissioner of elementary and secondary education may place
71 the collaborative on a probationary status to allow the implementation of a remedial plan after
72 which, if the plan is unsuccessful, the approval may be summarily revoked.

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

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

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

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

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

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

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

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

123 spent on administrative expenses; (5) any accounts held by the collaborative that may be
124 discretionarily spent by another person or entity; and (6) the division of costs and expenditures
125 for services for individuals under age 22 and individuals age 22 and above. The state auditor
126 shall develop a form to be used as part of the independent audit to ensure compliance with this
127 section.

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

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

operational services division may investigate the budget and finances of education collaboratives and their financial dealings, transactions and relationships and shall have the power to examine the records of education collaboratives and to prescribe methods of accounting and the rendering of periodic reports. The department of elementary and secondary education shall also be responsible for making the audited financial statement publicly available in a machine readable format through a searchable online database; 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 the audited financial statement publicly available. The database shall allow users to view information in aggregated and disaggregated forms and shall allow users to easily compare information across collaboratives. If the audited financial statement is not filed within 9 months of the end of the collaborative's fiscal year, the commissioner of elementary and secondary education shall notify the state auditor and the commissioner may suspend the education collaborative's authorization to operate, effective either at the close of the current school year or at such time as the commissioner deems prudent.

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

The trustee, trustees or governing board of any related nonprofit organization shall file a copy of the annual written report for the preceding fiscal year as required under section 8F of

169 chapter 12, including all attachments and schedules, with the commissioner of elementary and
170 secondary education within 10 days of filing said report with the attorney general; provided that
171 any related nonprofit organization not required to submit a complete audited financial statement
172 under section 8F of chapter 12 shall file a copy of said statement with the commissioner of
173 elementary and secondary education within 9 months of the end of the related nonprofit
174 organization's fiscal year. The audited financial statement shall be prepared in accordance with
175 such generally accepted accounting principles and reporting practices as may from time to time
176 be prescribed by the American Institute of Certified Public Accountants, or its successor
177 organization and shall be examined by an independent certified public accountant in accordance
178 with generally accepted auditing standards for the purpose of expressing an opinion on the
179 audited financial statement.

180 The board of elementary and secondary education shall promulgate regulations to ensure
181 that education collaboratives enter into agreements only with related nonprofit organizations that
182 are able to implement their stated goals in a manner that is cost effective and promotes
183 transparency. Said regulations shall include, but are not limited to, restricting payments by an
184 education collaborative to a related nonprofit organization whose administrative costs exceed a
185 specified percentage of the organization's total budget and restricting payments by an education
186 collaborative to a related nonprofit organization whose revenues attributable to an educational
187 collaborative exceed a specified percentage of the organization's total revenues.

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

Each education collaborative shall be reviewed by the department of elementary and secondary education on a periodic basis, but not less frequently than every 6 years. Such review shall include, but not be limited to, 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.

For the purposes of this section, the term “Related nonprofit organization” shall mean a nonprofit organization established under the laws of the commonwealth or any other state: (i) a primary purpose of which is to benefit or further the purposes of an education collaborative or that, on average over a 3-year period, receives more than 50 per cent of its funding from 1 or more education collaboratives; and (ii) 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.

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

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

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

SECTION 8. (a) Notwithstanding any general or special law to the contrary, each education collaborative shall prepare a report of all services it provides to individuals not enrolled in or employed by elementary or secondary schools in the commonwealth. This report shall include: (1) the scope of services provided to individuals not enrolled in or employed by elementary or secondary schools in the commonwealth; (2) the cost of and revenue source for these services; and (3) referral and enrollment procedures for these services. Each collaborative shall complete its report by March 1, 2012 and file it with the commissioner of elementary and secondary education, the commissioner of developmental services, the state auditor, the attorney general, the house and senate chairs of the joint committee on education, the house and senate chairs of the joint committee on children, families and persons with disabilities and the chairs of the house and senate committees on ways and means.

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

nominated jointly by The Arc of Massachusetts and the Association of Developmental Disabilities Providers. The investigation shall include, but not be limited to:

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

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

(3) what measures should be taken to ensure proper accounting of and funding for all services provided by education collaboratives and related nonprofit 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; and

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

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

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

256 The commission shall consist of 11 members: the commissioner of elementary and
257 secondary education or his designee, who shall serve as co-chair; the executive director of the
258 Massachusetts Organization of Educational Collaboratives or a designee, who shall serve as co-
259 chair; the secretary of education or a designee; and 8 persons to be appointed by the secretary of
260 education, 2 of whom shall serve as executive directors of education collaboratives of varying
261 size in the commonwealth, 2 of whom shall be selected from a list of 4 persons nominated by the
262 Massachusetts Association of School Committees, 2 of whom shall be selected from a list of 4
263 persons nominated by the Massachusetts Association of School Superintendents, 1 of whom
264 shall be selected from a list of 3 persons nominated by the Massachusetts Teachers Association
265 and 1 of whom shall be selected from a list of 3 persons nominated by the American Federation
266 of Teachers, Massachusetts.

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

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