

**SENATE . . . . . No. 235**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

***Barry R. Finegold***

*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 further narrow the achievement gap.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>Barry R. Finegold</i>	<i>Second Essex and Middlesex</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>
<i>Christopher G. Fallon</i>	<i>33rd Middlesex</i>
<i>George N. Peterson, Jr.</i>	<i>9th Worcester</i>
<i>Anthony W. Petrucci</i>	<i>First Suffolk and Middlesex</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>

**SENATE . . . . . No. 235**

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By Mr. Finegold, a petition (accompanied by bill, Senate, No. 235) of Barry R. Finegold, Frank A. Moran, Christopher G. Fallon, George N. Peterson, Jr. and other members of the General Court to further narrow the achievement gap. Education.

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Thirteen**  
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An Act to further narrow the achievement gap.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to provide for innovation into school districts and prioritize improvement in underperforming schools, and increased expanded public school choice by increasing the number of charter schools and by improving access and affordability of appropriate facilities for charter schools and their students, 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:*

1 SECTION 1. Section 1J of chapter 69 of the General Laws, as appearing in the 2010  
2 Official Edition, is hereby amended in subsection (l) by striking out the following words:- “or (3)  
3 consistent with the requirements of subsection (a), the school is chronically underperforming.”  
4 and inserting in place thereof the following:- “(3) the school has improved and the conditions  
5 created under this section are critical to the school’s improvement and shall remain in place, or  
6 (4) consistent with the requirements of subsection (a), the school is chronically  
7 underperforming.”

8 SECTION 2. Said chapter 69 is hereby further amended by inserting, after section 1J, the  
9 following new section:-

10 Section 1J½. (a) The commissioner of elementary and secondary education may, on the  
11 basis of student performance data collected pursuant to section 1I, a school or district review  
12 performed under section 55A of chapter 15, or regulations adopted by the board of elementary  
13 and secondary education, designate 1 or more schools in a school district other than a Horace  
14 Mann charter school as priority schools prior to being designated underperforming or chronically

15 underperforming. The board shall adopt regulations establishing standards for the commissioner  
16 to make such designations on the basis of data collected pursuant to section 11 or information  
17 from a school or district review performed under section 55A of chapter 15. Upon the release of  
18 the proposed regulations, the board shall file a copy thereof with the clerks of the house of  
19 representatives and the senate who shall forward the regulations to the joint committee on  
20 education. Within 30 days of the filing, the committee may hold a public hearing and issue a  
21 report on the regulations and file the report with the board. The board, pursuant to applicable  
22 law, may adopt final regulations making revisions to the proposed regulations as it deems  
23 appropriate after consideration of the report and shall forthwith file a copy of the regulations  
24 with the chairpersons of the joint committee on education and, not earlier than 30 days of the  
25 filing, the board shall file the final regulations with the state secretary. Schools that score in the  
26 lowest 20 percent statewide among schools serving common grade levels on a single measure  
27 developed by the department that takes into account student performance data and, beginning on  
28 July 1, 2013 improvement in student academic performance, shall be deemed eligible for  
29 designation as priority.

30 In adopting regulations allowing the commissioner to designate a school as priority, the  
31 board shall ensure that such regulations take into account indicators of school quality in making  
32 determinations regarding underperformance or chronic underperformance, such as student  
33 attendance, dismissal rates and exclusion rates, promotion rates, graduation rates or the lack of  
34 demonstrated significant improvement for 2 or more consecutive years in core academic  
35 subjects, either in the aggregate or among subgroups of students, including designations based  
36 special education, low-income, English language proficiency and racial classifications.

37 A school may be designated priority by the commissioner if any one of its subgroup  
38 scores are among the lowest performing subgroups in the commonwealth.

39 A priority school described in the following subsections shall operate in accordance with  
40 laws regulating other public schools, except as such provisions may conflict with this section. A  
41 student who is enrolled in a school at the time it is designated as priority shall retain the ability to  
42 remain enrolled in the school while remaining a resident of the district if the student chooses to  
43 do so.

44 (b) Upon the designation of a school as priority school in accordance with regulations  
45 developed pursuant to this section, the superintendent of the district, with approval by the  
46 commissioner, shall create a priority plan for the school, under subsections (b) to (e), inclusive.

47 (c) In creating the priority plan in subsection (b) the superintendent shall include  
48 provisions intended to maximize the rapid academic achievement of students at the school and  
49 shall, to the extent practicable, base the plan on student outcome data, including, but not limited  
50 to: (1) data collected pursuant to section 11 or information from a school or district review  
51 performed under section 55A of chapter 15; (2) student achievement on the Massachusetts

52 Comprehensive Assessment System; (3) other measures of student achievement, approved by the  
53 commissioner; (4) student promotion and graduation rates; (5) achievement data for different  
54 subgroups of students, including low-income students as defined in chapter 70, limited English-  
55 proficient students and students receiving special education; and (6) student attendance,  
56 dismissal rates and exclusion rates.

57 The superintendent shall also include in the creation of the priority plan, the following:  
58 (1) steps to address social service and health needs of students at the school and their families, to  
59 help students arrive and remain at school ready to learn; provided, however, that this may  
60 include mental health and substance abuse screenings; (2) steps to improve or expand child  
61 welfare services and, as appropriate, law enforcement services in the school community, in order  
62 to promote a safe and secure learning environment; (3) steps to improve workforce development  
63 services provided to students and their families at the school, to provide students and families  
64 with meaningful employment skills and opportunities; (4) steps to address achievement gaps for  
65 limited English-proficient, special education and low-income students; and (5) alternative  
66 English language learning programs for limited English proficient students, notwithstanding  
67 chapter 71A; and (6) a financial plan for the school, including any additional funds to be  
68 provided by the district, commonwealth, federal government or other sources.

69 The secretaries of health and human services, labor and workforce development, public  
70 safety and other applicable state and local social service, health and child welfare officials shall  
71 coordinate with the superintendent regarding the implementation of strategies under clauses (1)  
72 to (3), inclusive, of the second paragraph that are included in a final priority plan and shall,  
73 subject to appropriation, reasonably support such implementation consistent with the  
74 requirements of state and federal law applicable to the relevant programs that each such official  
75 is responsible for administering. The secretary of education and the commissioner of elementary  
76 and secondary education shall assist the superintendent in facilitating the coordination.

77 To assess the school across multiple measures of school performance and student  
78 success, the priority plan shall include measurable annual goals including, but not limited to: (1)  
79 student attendance, dismissal rates and exclusion rates; (2) student safety and discipline; (3)  
80 student promotion and graduation and dropout rates; (4) student achievement on the  
81 Massachusetts Comprehensive Assessment System; (5) progress in areas of academic  
82 underperformance; (6) progress among subgroups of students, including low-income students as  
83 defined by chapter 70, limited English-proficient students and students receiving special  
84 education; (7) reduction of achievement gaps among different groups of students; (8) student  
85 acquisition and mastery of twenty-first century skills; (9) development of college readiness,  
86 including at the elementary and middle school levels; (10) parent and family engagement; (11)  
87 building a culture of academic success among students; (12) building a culture of student support  
88 and success among school faculty and staff and; (13) developmentally appropriate child  
89 assessments from pre-kindergarten through third grade, if applicable.

90 (d) Notwithstanding any general or special law to the contrary, in creating the priority  
91 plan required in subsection (b), the superintendent may: (1) expand, alter or replace the  
92 curriculum and program offerings of the school, including the implementation of research-based  
93 early literacy programs, early interventions for struggling readers and the teaching of advanced  
94 placement courses or other rigorous nationally or internationally recognized courses, if the  
95 school does not already have such programs or courses; (2) reallocate the uses of the existing  
96 budget of the school; (3) provide additional funds to the school from the budget of the district, if  
97 the school does not already receive funding from the district at least equal to the average per  
98 pupil funding received for students of the same classification and grade level in the district; (4)  
99 provide funds, subject to appropriation and following consultation with applicable local unions,  
100 to increase the salary of any administrator, or teacher in the school, to attract or retain highly-  
101 qualified administrators, or teachers or to reward administrators, or teachers who work in  
102 underperforming schools that achieve the annual goals set forth in the priority plan; (5) expand  
103 the school day or school year or both of the school; (6) for an elementary school, add pre-  
104 kindergarten and full-day kindergarten classes, if the school does not already have such classes;  
105 (7) following consultation with applicable local unions, require the principal and all  
106 administrators, teachers and staff to reapply for their positions in the school, with full discretion  
107 vested in the superintendent regarding his consideration of and decisions on rehiring the  
108 principal and with full discretion vested in the principal regarding his consideration of and  
109 decisions on rehiring administrators, teachers and staff based on the reapplications; (8) limit,  
110 suspend or change 1 or more provisions of any contract or collective bargaining agreement, as  
111 the contract or agreement applies to the school; provided, that the superintendent shall not reduce  
112 the compensation of an administrator, teacher or staff member unless the hours of the person are  
113 proportionately reduced; (9) limit, suspend or change 1 or more school district policies or  
114 practices, as such policies or practices relate to the school; (10) include a provision of job-  
115 embedded professional development for teachers at the school, with an emphasis on strategies  
116 that involve teacher input and feedback; (11) provide increased opportunities for teacher  
117 planning time and collaboration focused on improving student instruction; (12) establish a plan  
118 for professional development for administrators at the school, with an emphasis on strategies that  
119 develop leadership skills and use the principles of distributive leadership; (13) establish steps to  
120 assure a continuum of high-expertise teachers by aligning the following processes with a  
121 common core of professional knowledge and skill: hiring, induction, teacher evaluation,  
122 professional development, teacher advancement, school culture and organizational structure; (14)  
123 develop a strategy to search for and study best practices in areas of demonstrated deficiency in  
124 the school; (15) establish strategies to address mobility and transiency among the student  
125 population of the school; and (16) include additional components based on addressing the  
126 reasons the school was designated as underperforming and the recommendations of the group of  
127 stakeholders in subsection (b).

128 If the superintendent does not approve a reapplication submitted by an employee pursuant  
129 to clause (7) for a position in the school or if an employee does not submit a reapplication for a

130 position in the school, the employee shall retain such rights as may be provided under law or any  
131 applicable collective bargaining agreement in relation to the employee's ability to fill another  
132 position in the district; provided, however, that the employee shall not have the right to displace  
133 any teacher with professional teacher status in any other school during a school year.

134 A teacher with professional teacher status in a school declared priority may be dismissed  
135 for good cause; provided, however, that the teacher receives 5 days written notice of the decision  
136 to terminate which shall include, without limitation, an explanation of the reason why the  
137 superintendent is not retaining the teacher in the school; provided, further, that the teacher may  
138 seek review of a termination decision within 5 days after receiving notice of the teacher's  
139 termination by filing a petition for expedited arbitration with the commissioner; provided,  
140 further, that except as otherwise provided herein section 42 of chapter 71 shall apply to a petition  
141 filed pursuant to this section; provided, further, that the commissioner shall cause an arbitrator to  
142 be selected pursuant to the procedures in section 42 of chapter 71 within 3 days of receipt of  
143 petition and shall conduct and complete a hearing within 10 days of receipt of the petition;  
144 provided, further, that in reviewing dismissal decisions, the arbitrator shall consider the  
145 components of the priority plan and shall also consider any personnel evaluations conducted that  
146 are consistent with the guidelines established pursuant to section 1B; and provided, further, that  
147 the arbitrator's decision shall be issued within 10 days from the completion of the hearing.

148 For a school with limited English-proficient students, the professional development and  
149 planning time for teachers and administrators identified in clauses (10) to (12), inclusive, shall  
150 include specific strategies and content designed to maximize the rapid academic achievement of  
151 limited English-proficient students at the school.

152 (e) Within 30 days of the local stakeholder group making recommendations under  
153 subsection (b), the superintendent shall submit a priority plan to the local stakeholder group, the  
154 school committee and the commissioner, all of whom may propose modifications to the plan.  
155 The superintendent shall make such plan immediately available to the public upon the  
156 submission. The stakeholder group, the school committee and the commissioner shall submit any  
157 proposed modifications to the superintendent not more than 30 days after the date of submission  
158 of the priority plan and the proposed modifications shall be made public immediately upon their  
159 submission to the superintendent. The superintendent shall consider and may incorporate the  
160 modifications into the plan if the superintendent determines that inclusion of the modifications  
161 would further promote the rapid academic achievement of students at the school or may alter or  
162 reject the proposed modifications submitted under this subsection. Within 30 days of receiving  
163 any proposed modifications under this subsection, the superintendent shall issue a final priority  
164 plan for the school and the plan shall be made publicly available.

165 (f) Within 30 days of the issuance of a final priority plan under subsection (e) a school  
166 committee or local union may appeal to the commissioner regarding 1 or more components of  
167 the plan, including the absence of 1 or more modifications proposed under subsection (e). The

168 commissioner may, in consultation with the superintendent, modify the plan if the commissioner  
169 determines that: (1) such modifications would further promote the rapid academic achievement  
170 of students in the applicable school; (2) a component of the plan was included, or a modification  
171 was excluded, on the basis of demonstrably-false information or evidence; or (3) the  
172 superintendent failed to meet the requirements of subsections (b) to (e), inclusive. The decision  
173 of the commissioner regarding an appeal under this subsection shall be made within 30 days and  
174 shall be final.

175 (g) If, after considering the recommendations of the group of stakeholders, the  
176 superintendent considers it necessary to maximize the rapid academic achievement of students at  
177 the applicable school by altering the compensation, hours and working conditions of the  
178 administrators, teachers, principal and staff at the school or by altering other provisions of a  
179 contract or collective bargaining agreement applicable to the administrators, teachers, principal  
180 and staff, the superintendent may request that the school committee and any union bargain or  
181 reopen the bargaining of the relevant collective bargaining agreement to facilitate such  
182 achievement. The bargaining shall be conducted in good faith and completed not later than 30  
183 days from the point at which the superintendent requested that the parties bargain. The  
184 agreement shall be subject to ratification within 10 business days by the bargaining unit members  
185 in the school. If the parties are unable to reach an agreement within 30 days or if the agreement is  
186 not ratified within 10 business days by the bargaining unit members of the school, the parties  
187 shall submit remaining unresolved issues to a joint resolution committee as established in  
188 subsection (f) of section 3 for dispute resolution process on the next business day following the  
189 end of the 30-day bargaining period or failure to ratify.

190 (h) The superintendent may select an external receiver to operate the school and  
191 implement the priority plan or to assist the superintendent with the implementation.

192 (j) Each priority plan shall be authorized for a period of not more than 3 years, subject to  
193 subsection (k). The superintendent or external receiver, as applicable, may develop additional  
194 components of the priority plan pursuant to subsections (b) to (g) inclusive and shall develop  
195 annual goals for each component of the plan, in a manner consistent with subsections (b) to (g),  
196 inclusive. The superintendent shall be responsible for meeting the goals of the plan.

197 (k) Each school designated by the commissioner as priority under subsection (a) shall be  
198 reviewed by the superintendent, in consultation with the principal of the school. The purpose of  
199 the review shall be to determine whether the school has met the annual goals in its priority plan  
200 and to assess the overall implementation of the priority plan. The review shall be in writing and  
201 shall be submitted to the commissioner and the relevant school committee. The review shall be  
202 submitted in a format determined by the department of elementary and secondary education.

203 If the commissioner determines that the school has met the annual performance goals  
204 stated in the priority plan, the review shall be considered sufficient and the implementation of the

205 priority plan shall continue. If the commissioner determines that the school has not met 1 or  
206 more goals in the priority plan and that the failure to meet the goals may be corrected through  
207 reasonable modification of the plan, the superintendent may amend the priority plan in a manner  
208 consistent with the provisions of subsection (b) to (g) inclusive. If the commissioner determines  
209 that the school has substantially failed to meet 1 or more goals in the plan, the commissioner may  
210 appoint an examiner to conduct an evaluation of the school’s implementation of the priority plan.

211 If the commissioner determines that the school has substantially failed to meet multiple  
212 goals in the plan, the commissioner may require changes to the priority plan to be implemented  
213 by the superintendent in the following year or the appointment of an external partner to advise  
214 and assist the superintendent in implementing the plan the following year. If the changes to the  
215 priority plan require changes in a collective bargaining agreement applicable to administrators,  
216 teachers or staff in the school, the bargaining procedure in subsection (g) shall be used. If an  
217 underperforming school is operated by an external receiver, the commissioner may require the  
218 superintendent to terminate the receiver and develop a new priority plan; provided, however, that  
219 the superintendent shall not terminate the receiver before the completion of the first full school  
220 year of the operation of the underperforming school.

221 (l) Upon the expiration of a priority plan, the commissioner shall conduct a review of the  
222 school to determine whether the school has improved sufficiently, requires further improvement  
223 or has failed to improve. On the basis of such review, the commissioner may determine that: (1)  
224 the school has improved sufficiently for the designation of the school as underperforming to be  
225 removed; (2) the school has improved, but the school remains underperforming, in which case  
226 the superintendent may, with the approval of the commissioner, renew the plan or create a new  
227 or modified plan for an additional period of not more than 3 years, consistent with the  
228 requirements of subsections (a) to (g); or (3) the school has improved and the conditions created  
229 under this section are critical to the school’s improvement and shall remain in place, or (4)  
230 consistent with the requirements of subsection (a), the school is chronically underperforming.”

231 SECTION 3. Section 89 of chapter 71 of the General Laws, as so appearing, is hereby  
232 amended by striking out, in lines 152 through 160, inclusive, the following:- “provided, however,  
233 notwithstanding subsection (c) the 14 new Horace Mann charter schools shall not be subject to  
234 the requirement of an agreement with the local collective bargaining unit prior to board approval;  
235 provided, further, that after the charter for these 14 new Horace Mann charter schools have been  
236 granted by the board, the schools shall develop a memorandum of understanding with the school  
237 committee and the local union regarding any waivers to applicable collective bargaining  
238 agreements;” and inserting in place thereof the following:- “provided, however, notwithstanding  
239 subsection (c) the new Horace Mann charter schools shall not be subject to the requirement of  
240 an agreement with the local collective bargaining unit prior to board approval; provided, further,  
241 that after the charter for these new Horace Mann charter schools have been granted by the board,  
242 the schools shall develop a memorandum of understanding with the school committee and the  
243 local union regarding any waivers to applicable collective bargaining agreements;”

244 SECTION 4. Subsection (i) of said section 89 of chapter 71, as so appearing, is hereby  
245 further amended by striking out the first paragraph and inserting in place thereof the following  
246 paragraph:-

247 “Not more than 120 charter schools shall be allowed to operate in the commonwealth at  
248 any time, excluding those commonwealth charter schools that are located in school districts  
249 qualifying under paragraph (3) for tuition payments to commonwealth charter schools in excess  
250 of 9 per cent of the district’s net school spending; provided, however, that of the 120 charter  
251 schools, not more than 48 shall be Horace Mann charter schools; provided, however,  
252 notwithstanding subsection (c) the new Horace Mann charter schools shall not be subject to the  
253 requirement of an agreement with the local collective bargaining unit prior to board approval;  
254 provided, further, that after the charter for these new Horace Mann charter schools have been  
255 granted by the board, the schools shall develop a memorandum of understanding with the school  
256 committee and the local union regarding any waivers to applicable collective bargaining  
257 agreements; provided, further, that if an agreement is not reached on the memorandum of  
258 understanding at least 30 days before the scheduled opening of the school, the charter school  
259 shall operate under the terms of its charter until an agreement is reached; and not more than 72  
260 shall be commonwealth charter schools, excluding those commonwealth charter schools that are  
261 located in school districts qualifying under paragraph (3) for tuition payments to commonwealth  
262 charter schools in excess of 9 per cent of the district’s net school spending. The board shall not  
263 approve a new commonwealth charter school in any community with a population of less than  
264 30,000 as determined by the most recent United States Census estimate, unless it is a regional  
265 charter school.”

266 SECTION 5. Said section 89 of chapter 71, as so appearing, is hereby further amended by  
267 striking out, in line 207, the following:- “but shall not exceed 18 percent”.

268 SECTION 6. Said section 89 of chapter 71, as so appearing, is hereby further amended  
269 by adding after the word “year.”, in line 173, the following new sentence:-

270 “Upon recommendation by the commissioner and the receiver, the board shall review  
271 applications to establish a charter school any district that has been designated by the board as  
272 chronically underperforming pursuant to Section 1K of chapter 69 as such applications are  
273 received, and grant new charters as approved by the board.”

274 SECTION 7. Said section 89 of chapter 71, as so appearing, is hereby further amended  
275 by striking out, in line 580, the following words:- “and local collective bargaining unit”.

276 SECTION 8. Paragraph (2) of subsection (i) of said section 89 of chapter 71 is hereby  
277 further amended by striking out the first paragraph and inserting in place thereof the following  
278 paragraph:-

279 “In any fiscal year, no public school district’s total charter school tuition payment to  
280 commonwealth charter schools shall exceed 9 per cent of the district’s net school spending,  
281 except for those school districts qualifying under paragraph (3) where such tuition payments in  
282 excess of 9 per cent of the district’s net school spending have been previously authorized by the  
283 board. The commonwealth shall incur charter school tuition payments for siblings attending  
284 commonwealth charter schools to the extent that their attendance would otherwise cause the  
285 school district's charter school tuition payments to exceed 9 per cent of the school district's net  
286 school spending, excluding those districts that qualify under said paragraph (3).”

287 SECTION 9: Paragraph (3) of said subsection (i) of section 89 of chapter 71, as so  
288 appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the  
289 following paragraph:-

290 “In any fiscal year, if the board determines based on student performance data collected  
291 pursuant to section 11, said district is in the lowest 10 percent of all statewide composite  
292 performance index scores, as defined in regulation, released in the 2 consecutive school years  
293 before the date the charter application is submitted, the board may approve commonwealth  
294 charter school amendments and applications that have the effect of increasing the school  
295 district’s total charter school tuition payment to commonwealth charter schools above 9 per cent  
296 of the district’s net school spending. For a district qualifying under this paragraph whose charter  
297 school tuition payments exceed 9 per cent of the school district’s net school spending, the board  
298 shall provide expedited consideration of an application for the establishment or expansion of a  
299 commonwealth charter school, without regard to the standard annual process for other such  
300 applications as established in paragraph (1), if an applicant, or a provider with which an  
301 applicant proposes to contract, has a record of operating at least 1 school or similar program that  
302 demonstrates academic success and organizational viability and serves populations similar to  
303 those the proposed school seeks to serve from the following categories of students, those: (i)  
304 eligible for free lunch; (ii) eligible for reduced price lunch; (iii) that require special education;  
305 (iv) limited English-proficient of similar language proficiency level as measured by the  
306 Massachusetts English Proficiency Assessment examination; (v) sub-proficient, which shall  
307 mean students who have scored in the “needs improvement”, “warning” or “failing” categories  
308 on the mathematics or English language arts exams of the Massachusetts Comprehensive  
309 Assessment System for 2 of the past 3 years or as defined by the department using a similar  
310 measurement; (vi) who are designated as at risk of dropping out of school based on predictors  
311 determined by the department; (vii) who have dropped out of school; or (viii) other at-risk  
312 students who should be targeted to eliminate achievement gaps among different groups of  
313 students. Applications from qualified providers under this section may be approved even if such  
314 providers do not currently serve the identical grade levels for which they are seeking a new  
315 charter or amendment or do not serve the identical student population that will likely enroll in the  
316 new or expanded school. For a district approaching its net school spending cap, the board shall  
317 give preference to applications from providers operating schools in more than 1 municipality.”

318 SECTION 10. Subsection (n) of said section 89 of chapter 71, as so appearing, is hereby  
319 amended by inserting after the second paragraph the following paragraphs:-

320 “Subject to approval by the commissioner, school districts or municipalities that rent  
321 classroom space to commonwealth charter schools under lease agreements with terms of at least  
322 ten years may require such schools to institute reasonable lottery preferences for elementary  
323 school students who live within 1 mile of such school buildings, middle school students who live  
324 within 1.5 miles of such school buildings, or high school students who live within 2 miles of  
325 such school buildings, or any student who lives within the district’s established student  
326 assignment zone in which such school buildings are located as a condition of such lease  
327 agreements. Such preferences may include preferences for students who qualify for the federal  
328 free and reduced lunch program, have a disability as defined in chapter 71B section 1, or come  
329 from households where a language other than English is spoken.

330 Subject to approval by the Commissioner, commonwealth charter schools may  
331 voluntarily adopt reasonable lottery preferences for elementary students who live within 1 mile  
332 of the school, middle school students who live within 1.5 miles of such school buildings, or high  
333 school students who live within 2 miles of the school, or any student who lives within the  
334 district’s established student assignment zone in which the school is located. Such preferences  
335 may include preferences for students who qualify for the federal free and reduced lunch program,  
336 have a disability as defined in chapter 71B section 1, or come from households where a language  
337 other than English is spoken. Under no circumstances may such preferences serve to limit the  
338 number of students in these categories who are enrolled in a commonwealth charter school.

339 Subject to approval by the Commissioner, charter schools located within the same  
340 municipality may voluntarily establish a common lottery, which may provide student applicants  
341 with a single offer for admission.”

342 SECTION 11. Subsection (b) of section 15 of chapter 70B of the General Laws, as so  
343 appearing, is hereby amended by striking out the second paragraph and inserting in place thereof  
344 the following paragraph:-

345 “Before the sale or lease of an assisted structure or facility or a portion of that structure or  
346 facility, the school district in control of the structure or facility shall submit to the authority a  
347 district-wide school facility use plan that shall include, but not be limited to, a listing of all  
348 school facilities under the control of the school district, a detailed description of both the current  
349 use and proposed use of each school facility, the most recent enrollment data, by school facility,  
350 then available to the school district, a detailed floor plan of each school facility that shows and  
351 labels each space in the facility and whether it is used as a classroom or has some other use and  
352 any other information that may be required by the authority to understand the district’s school  
353 facility use plan. If the plan includes the closure, sale or lease of a school facility or any part of a  
354 school facility, the authority may conduct, with the full cooperation of the district, an analysis of

355 district-wide enrollment capacity and future enrollment trends for the district. Such an analysis  
356 may also be requested by one or more commonwealth charter schools established pursuant to  
357 section 89 of said chapter 71, where there is reasonable evidence of excess capacity sufficient to  
358 meet the facilities needs of such charter schools. If the capacity analysis and enrollment  
359 projection indicate an extended period of significant excess capacity within the district’s  
360 educational facilities, the district shall, prior to consideration of any other disposition of the  
361 identified excess capacity, make a good faith offer to sell or lease in whole or in part at fair  
362 market value the identified excess capacity to one or more commonwealth charter schools  
363 established pursuant to section 89 of chapter 71 or applicants for a commonwealth charter school  
364 pursuant to said section 89 of said chapter 71 that serve or are seeking to serve students who live  
365 in the school district. In the event that there is not enough excess capacity to meet the space  
366 needs of all the eligible commonwealth charter schools that seek to lease or buy such excess  
367 capacity, priority shall be given to those charter schools with the most success as measured by  
368 the criteria identified in section 1I of chapter 69. Notwithstanding any other provision of this  
369 section, the total rent for excess capacity leased to a commonwealth charter school for a school  
370 year shall not exceed the total per pupil capital needs component received by a commonwealth  
371 charter school for that school year pursuant to subsection ff of section 89 of chapter 71. The  
372 authority shall establish guidelines for school districts and municipalities that lease or sell  
373 property to charter schools under this section, in order to ensure the process is open, fair and in  
374 compliance with general laws and regulations governing the disposition of public property. The  
375 authority shall not recapture commonwealth and authority assistance for any such excess  
376 capacity that is sold or leased to a commonwealth charter school or applicant for a  
377 commonwealth charter school.”

378 SECTION 12: Subsection (d) of said section 15 of chapter 70B, as so appearing, is  
379 hereby amended by striking out the first sentence and inserting in place thereof the following  
380 sentence:-

381 “Except for the provisions of the second paragraph of subsection b, the provisions of this  
382 section at the discretion of the authority, shall not apply to sales and lease of such assisted  
383 structures or facilities for nonprofit public purposes.”