

**HOUSE . . . . . No. 3390**

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**The Commonwealth of Massachusetts**

PRESENTED BY:

*Daniel Cullinane*

*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 improve adult basic education access and quality.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Daniel Cullinane</i>	<i>12th Suffolk</i>	<i>1/15/2015</i>
<i>Michelle M. DuBois</i>	<i>10th Plymouth</i>	<i>12/26/2019</i>
<i>Michael O. Moore</i>	<i>Second Worcester</i>	<i>12/26/2019</i>
<i>David M. Rogers</i>	<i>24th Middlesex</i>	<i>12/26/2019</i>
<i>Marjorie C. Decker</i>	<i>25th Middlesex</i>	<i>12/26/2019</i>
<i>Ellen Story</i>	<i>3rd Hampshire</i>	<i>12/26/2019</i>
<i>Mary S. Keefe</i>	<i>15th Worcester</i>	<i>12/26/2019</i>
<i>Tricia Farley-Bouvier</i>	<i>3rd Berkshire</i>	<i>12/26/2019</i>
<i>Frank A. Moran</i>	<i>17th Essex</i>	<i>12/26/2019</i>
<i>Diana DiZoglio</i>	<i>14th Essex</i>	<i>12/26/2019</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>	<i>12/26/2019</i>
<i>Barbara A. L'Italien</i>	<i>Second Essex and Middlesex</i>	<i>12/26/2019</i>
<i>Jason M. Lewis</i>	<i>Fifth Middlesex</i>	<i>12/26/2019</i>
<i>Daniel M. Donahue</i>	<i>16th Worcester</i>	<i>12/26/2019</i>
<i>Joseph W. McGonagle, Jr.</i>	<i>28th Middlesex</i>	<i>12/26/2019</i>
<i>Angelo J. Puppolo, Jr.</i>	<i>12th Hampden</i>	<i>12/26/2019</i>
<i>Kay Khan</i>	<i>11th Middlesex</i>	<i>12/26/2019</i>
<i>Josh S. Cutler</i>	<i>6th Plymouth</i>	<i>12/26/2019</i>

<i>Thomas M. Stanley</i>	<i>9th Middlesex</i>	<i>12/26/2019</i>
<i>Marcos A. Devers</i>	<i>16th Essex</i>	<i>12/26/2019</i>
<i>Carmine L. Gentile</i>	<i>13th Middlesex</i>	<i>12/26/2019</i>
<i>Tom Sannicandro</i>	<i>7th Middlesex</i>	<i>12/26/2019</i>
<i>James R. Miceli</i>	<i>19th Middlesex</i>	<i>12/26/2019</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>	<i>12/26/2019</i>
<i>Peter V. Kocot</i>	<i>1st Hampshire</i>	<i>12/26/2019</i>
<i>Elizabeth A. Malia</i>	<i>11th Suffolk</i>	<i>12/26/2019</i>
<i>Michael D. Brady</i>	<i>Second Plymouth and Bristol</i>	<i>12/26/2019</i>
<i>Sal N. DiDomenico</i>	<i>Middlesex and Suffolk</i>	<i>12/26/2019</i>
<i>Stephen Kulik</i>	<i>1st Franklin</i>	<i>12/26/2019</i>
<i>Carlos Gonzalez</i>	<i>10th Hampden</i>	<i>12/26/2019</i>

**HOUSE . . . . . No. 3390**

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By Mr. Cullinane of Boston, a petition (accompanied by bill, House, No. 3390) of Daniel Cullinane and others for legislation to improve adult basic education access and quality. Education.

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**The Commonwealth of Massachusetts**

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**In the One Hundred and Eighty-Ninth General Court  
(2015-2016)**  
\_\_\_\_\_

An Act to improve adult basic education access and quality.

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

1 Chapter 69 of the General Laws is hereby amended by inserting after section 1H, as  
2 appearing in the 2012 Official Edition, the following section:-

3 Section 1H ½. (a) As used in this section the following words shall, unless the context  
4 clearly requires otherwise, have the following meanings:-

5 “Administrative assessment”, an amount paid by the department to the adult basic  
6 educators organization for the costs of representing adult basic educators as provided in  
7 subsections (c) to (e), inclusive.

8 “Adult basic education program”, a public or private entity which holds a grant or  
9 contract with the department for the provision of adult basic education services as provided by  
10 section 1H, or which provides such adult basic education services pursuant to an inter-agency  
11 agreement or sub-contract with an adult basic education program.

12 “Adult basic education services”, all teaching, student support, administrative,  
13 professional development services provided by an adult basic education program and  
14 professional development services provided to adult basic educators and to adult basic education  
15 programs.

16 “Adult basic educators”, any individual who is compensated directly or indirectly by an  
17 adult basic education program to provide adult basic education services.

18 “Adult basic educators organization”, the organization selected by the adult basic  
19 educators to represent them in negotiating, executing and administering an adult basic education  
20 standards agreement with the department on behalf of the Commonwealth.

21 “Adult basic education standards agreement”, or “standards agreement”, the agreement  
22 negotiated between the department and the adult basic educators organization. The written  
23 agreement shall legally bind the commissioner, the Commonwealth, and the adult basic  
24 educators organization.

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

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

28 (b) The commissioner shall develop and enforce quality adult basic education standards  
29 to improve the delivery and quality of adult basic education at adult basic education programs.  
30 Such standards shall be developed through negotiations as set forth in subsection (e) with an  
31 organization selected by adult basic educators. The process of developing and enforcing such

32 standards shall in no way limit or intrude upon the rights of adult basic educators under federal  
33 labor law or under chapter 150E of the General Laws.

34 (c) Subsections (b) to (f) 8, inclusive, shall apply to all adult basic educators.

35 (d) (1) Adult Basic Educators shall have the right to form, join and participate in the  
36 activities of an organization of their own choosing for the purpose of representation and  
37 negotiations with the commissioner over those subjects specified in paragraph (1) of subsection  
38 (e).

39 (2) The commissioner or his or her designee may engage on behalf of the Commonwealth  
40 in negotiations with the adult basic educators organization and agree to terms of an adult basic  
41 education standards agreement pursuant to subsection (e).

42 (3) Every adult basic education program shall provide to the commissioner a list of the  
43 names of all currently employed adult basic educators with additional information for each  
44 including home address, telephone numbers, e-mail addresses, workplace addresses and job  
45 titles. Such lists shall be provided in the manner requested by the commissioner within 30 days  
46 of enactment, and annually thereafter by January 30. Except as provided in paragraph (4) the list  
47 shall not be a public record.

48 (4) The commissioner shall, upon request and written certification that the list and  
49 accompanying information shall be used solely for the purpose of seeking to represent or  
50 continuing representation of adult basic educators, provide to an organization a list of all current  
51 adult basic educators who are authorized to select a representative under subsection (d). Such list  
52 shall contain such information including name, home address, telephone numbers, e-mail  
53 addresses, workplace addresses and job titles for each adult basic educator.

54 (5) The commissioner on behalf of the Commonwealth shall recognize an adult basic  
55 education organization designated by adult basic educators in accordance with the following  
56 process:

57 (i) The Commissioner on behalf of the Commonwealth shall extend recognition to an  
58 organization identified by a showing of written majority support by the adult basic educators  
59 authorized to select a representative under this section. A showing of majority support shall be  
60 verified by a neutral third party, agreed upon by the organization and the commissioner, who  
61 shall conduct a confidential inspection of the showing of majority support to determine whether  
62 the organization has such support and shall report the results to the commissioner, organization  
63 and adult basic educators; or

64 (ii) The commissioner, upon receipt of an organization's petition that 30 per cent of adult  
65 basic educators in the commonwealth wish to be represented by that organization, or upon  
66 receipt of a petition filed by or on behalf of 45 per cent of the adult basic educators in the  
67 commonwealth alleging that the recognized adult basic educator organization no longer  
68 represents a majority of the adult basic educators, shall direct an election by secret ballot or shall  
69 use any other suitable method provided the opportunity for a private vote is preserved to  
70 determine whether, or by which organization, the adult basic educators desire to be represented  
71 for purposes of this section. Said election shall be conducted by an experienced, neutral third  
72 party selected by the adult basic educators organization from a list of 5 neutral third parties  
73 prepared by the commissioner. The commissioner shall certify the organization that receives a  
74 majority of the votes cast in such election as the recognized adult basic educators organization.  
75 The decision of the neutral shall be final and binding.

76 (6) In any election conducted pursuant to subparagraph (ii) of paragraph (5), the  
77 commissioner, the department, the Commonwealth and the adult basic education programs shall  
78 not seek to influence the vote of any adult basic educator. Recognition pursuant to this section  
79 shall remain in effect until a majority of adult basic educators chooses another adult basic  
80 educator organization or no adult basic educators organization in accordance with subparagraph  
81 (ii) of paragraph (5). Only 1 organization at any time may be recognized as the representative of  
82 adult basic educators for purposes of this section.

83 (7) No election shall be conducted when a valid election has been held on the preceding  
84 12 months or an adult basic education standards agreement is in effect.

85 (e) (1) Negotiations between the commissioner and the adult basic educators organization  
86 shall be limited to matters related to the department's role in adult basic education as described  
87 in section 1H, including: (i) professional development and training; (ii) conditions affecting  
88 recruitment and retention of adult basic educators; (iii) programmatic performance review  
89 criteria; (iv) career development payments made by the commonwealth to compensate  
90 professionals for increases in educational attainment and incentives for advancement; (v)  
91 improving access for adult basic educators to retirement, health and welfare benefits; (vi) the  
92 grant and contract application criteria and process; (vii) the manner, method, level, and  
93 structure and rate of both rate-based and non rate-based funding by the department; (viii) an  
94 administrative assessment; and (ix) dispute resolution procedures related to (i) through (viii).

95 (2) The parties shall seek to reach an adult basic educators standards agreement through  
96 good faith negotiation based on the interests of both parties. If after a reasonable period of  
97 negotiations the parties are unable to reach an agreement, the parties shall engage, and share the

98 costs of a third party facilitator or mediator to assist them in further interest-based negotiations.  
99 The parties may engage such a facilitator or mediator at any earlier stage of negotiations. A  
100 facilitator or mediator shall be empowered to order the parties to exchange information that is  
101 reasonably necessary and relevant to negotiations and to require specific representatives  
102 authorized to enter into an adult basic educators standards agreement to be present during  
103 negotiations. If after a reasonable period of facilitated or mediated negotiations the parties are  
104 unable to reach an agreement, the facilitator or mediator shall issue a written report indicating the  
105 subjects upon which agreement was reached and recommendations for a complete agreement  
106 with a rationale. If the full report is not mutually agreeable to the parties, the mediator or  
107 facilitator shall determine a schedule for resumed negotiations, provided that the parties may  
108 mutually agree at any time to adopt such recommendations as to which there is agreement and  
109 limit further negotiations to the issues remaining in dispute. The mediator or facilitator may  
110 request information from the parties regarding their respective positions on any matter in dispute.

111 (3) The adult basic education standards agreement reached between the commissioner,  
112 the Commonwealth, and the adult basic educators organization shall not exceed a term of 3  
113 years; provided however, that the parties may mutually agree to modify or extend an agreement  
114 or any portion thereof for a period of time in excess of the agreement's duration. The agreement  
115 shall be reduced to writing and executed by the parties.

116 (4) The commissioner shall submit to the clerks of the senate and the house of  
117 representatives and the house and senate committees on ways and means within 30 days after the  
118 date on which the agreement is executed by the parties, a request for an appropriation necessary  
119 to fund the cost items associated with matters identified in paragraph (a1); provided, however,  
120 that if the General Court is not in session at that time, such request shall be submitted at the next



121 session thereof. If the General Court fails to enact an appropriation necessary to fund the cost  
122 items, such cost items shall be returned to the parties for further negotiations.

123 (5) The commissioner shall take all necessary steps to implement and enforce the terms  
124 of the agreement. If an agreement contains a conflict between matters which are within the  
125 scope of negotiations pursuant to this section and any rules, regulations or policies of the  
126 department, the terms of the adult basic educators standards agreement shall prevail.

127 (6) This section shall not create or modify:

128 (i) The adult basic education program's right to choose, direct and terminate the services  
129 of an adult basic educator that it employs;

130 (ii) The rights of employers and employees under the National Labor Relations Act , 29  
131 U.S.C. 151, et seq. or under chapter 150E of the General Laws;

132 (iii) The right of the commissioner, the department, and the secretary of education to  
133 adopt requirements pursuant to section 1H, except that such requirements shall not diminish the  
134 minimum standards established under an adult basic educator standards agreement;

135 (7) In enacting this chapter, the General Court intends to provide state action immunity  
136 under federal and state antitrust laws for the joint activities of adult basic educators and the  
137 organization they select to represent them for purposes of this chapter.

138 (f) This act applies only to the relationship, as defined in subsections (c) through (e),  
139 between the department and adult basic educators. If any part of this act is found to be in  
140 conflict with federal requirements that are a prescribed condition to the allocation of federal  
141 funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict

142 and with respect to the programs or centers directly affected, and any such finding does not  
143 affect the operation of the remainder of this act in its application to the programs or centers  
144 concerned. Standards adopted under this act shall meet federal requirements that are a necessary  
145 condition to the receipt of federal funds by the commonwealth.

146 (g) This act may be known and cited as the Access to Quality Adult Basic Education Act.