

HOUSE No.

The Commonwealth of Massachusetts



CHARLES D. BAKER
GOVERNOR

OFFICE OF THE GOVERNOR
COMMONWEALTH OF MASSACHUSETTS
STATE HOUSE · BOSTON, MA 02133

KARYN POLITO
LIEUTENANT GOVERNOR

October 8, 2015

To the Honorable Senate and House of Representatives,

I am pleased to submit for your consideration, “An Act to Improve and Expand Educational Opportunity.”

This legislation increases educational options for parents and their children in the state’s most underserved communities while creating new opportunities for charter schools to partner with districts in turning around our lowest performing schools.

Authorized since 1993 in Massachusetts, charter schools have demonstrated successfully their capacity to stimulate innovation in learning and deliver high-quality educational opportunities to the Commonwealth’s children. Under the existing framework, the current number of charter schools is unable to keep up with parental demand for school choices. This bill begins to meet that demand by annually permitting up to 12 additional or expanded charter schools, which together may serve up to 1 percent of the total statewide public school enrollment and may only be located in those districts that are performing in the bottom 25 percent statewide.

This legislation also enables districts to more effectively leverage the expertise and demonstrated success of charter schools to close the achievement gap and turn around failing schools by expanding strategic partnerships between high-performing charter operators and underperforming district schools. Specifically, both Horace Mann and commonwealth charter schools will be authorized to provide enrollment guarantees to those students currently assigned to underperforming or chronically underperforming schools.

Every child deserves access to high-quality educational choices that put him or her on the path to success. This bill allows charter schools to provide enrollment weights or preferences for students facing the greatest of challenges, including students with disabilities, English language learners and students who are in foster care, homeless or at risk of educational failure because of excessive absenteeism, drop-out status or involvement in the juvenile justice system. Weight also may be given to students who reside in a certain geographical area, provided that the percentage of low-income students in that area is equal to or higher than the district average.

This bill also alleviates pressures concerning the cost and availability of charter school space by indexing the capital needs allotment in the tuition formula for charter schools to a commonly used index of school construction costs. Charter schools further would have the right of first refusal or an option to match a good faith offer for a district's qualified excess facility space.

This bill takes a balanced approach to improving and expanding educational opportunities for students whose needs demand the very best in excellence and innovation in instruction and educational approaches, most critically in districts requiring additional supports. I urge your prompt enactment of this legislation.

Sincerely,

Charles D. Baker,
Governor

The Commonwealth of Massachusetts

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

An Act to improve and expand educational opportunity.

Whereas, The deferred operation of this act would tend to defeat its purpose, which forthwith is to improve and expand educational opportunities, an expansion which is immediately needed to provide fair access to and efficient administration of school options, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public peace and 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. Subsection (a) of section 1J of chapter 69 of the General Laws, as
2 appearing in the 2014 Official Edition, is hereby amended by adding the following paragraph:-

3 The board may entertain and approve applications to establish a Horace Mann or
4 commonwealth charter school that is designated to serve the student population served by a
5 district school that has been designated by the board as underperforming or chronically
6 underperforming. In reviewing such an application, the board shall consider the likelihood of
7 success of any turnaround plans proposed or adopted pursuant to this section or under the
8 provisions of section 1K.

9 SECTION 2. Subsection (a) of section 1K of said chapter 69, as so appearing, is hereby
10 amended by adding the following paragraph:-

11 The board may entertain and approve applications to establish a Horace Mann or
12 commonwealth charter school to serve the student population of any school that is located in a
13 district that has been designated by the board as chronically underperforming. In reviewing such
14 an application, the board shall consider the likelihood of success of any turnaround plans
15 proposed or adopted pursuant to this section or under the provisions of section 1J.

16 SECTION 3. Subsection (b) of section 15 of chapter 70B of the General Laws, as
17 appearing in the 2014 Official Edition, is hereby amended by striking out, in lines 49-76
18 inclusive, the second paragraph and inserting in place thereof the following paragraph:-

19 Before the sale or lease of an assisted structure or facility or a portion of that structure or
20 facility, the school district in control of the structure or facility shall submit to the authority a
21 district-wide school facility use plan that shall include, but not be limited to, a listing of all
22 school facilities under the control of the school district, a detailed description of both the current
23 use and proposed use of each school facility, the most recent enrollment data, by school facility,
24 then available to the school district, a detailed floor plan of each school facility that shows and
25 labels each space in the facility and whether it is used as a classroom or has some other use and
26 any other information that may be required by the authority to understand the district's school
27 facility use plan. If the plan includes the closure, sale or lease of a school facility or any part of a
28 school facility, the authority may conduct, with the full cooperation of the district, an analysis of
29 district-wide enrollment capacity and future enrollment trends for the district. Such an analysis
30 also may be requested by one or more commonwealth charter schools established pursuant to
31 section 89 of chapter 71, where there is reasonable evidence of excess capacity sufficient to meet
32 the facilities needs of such charter schools. If the capacity analysis and enrollment projection
33 indicate an extended period of significant excess capacity within the district's educational

34 facilities, the district shall, prior to consideration of any other disposition of the identified excess
35 capacity, make a good faith offer to sell or lease in whole or in part at fair market value the
36 identified excess capacity to one or more commonwealth charter schools established pursuant to
37 section 89 of chapter 71 or an applicant or applicants for a commonwealth charter school
38 pursuant to said section 89 of chapter 71 that serve or are seeking to serve students who live in
39 the school district where such a charter school or schools exist. In the event that there is not
40 enough excess capacity to meet the space needs of all the eligible commonwealth charter schools
41 that seek to lease or buy such excess capacity, priority shall be given to those charter schools
42 with the most success as measured by the criteria identified in section 11 of chapter 69.
43 Notwithstanding any other provision of this section, commonwealth charter schools shall be
44 given the opportunity to match any good-faith offer received by the district for the excess
45 capacity; provided that, if the district does not receive any such offer from another entity, the
46 total rent for excess capacity leased to a commonwealth charter school for that school year shall
47 not exceed the total per pupil capital needs component received by the commonwealth charter
48 school for that school year pursuant to subsection (ff) of section 89 of chapter 71. The authority
49 shall not recapture commonwealth and authority assistance for any such excess capacity that is
50 sold or leased to a commonwealth charter school or an applicant for a commonwealth charter
51 school.

52 SECTION 4. Said section 15 of said chapter 70B, as so appearing, is hereby further
53 amended by striking out, in lines 86-88 inclusive, subsection (d) and inserting in place thereof
54 the following subsection:-

55 (d) Except for the provisions of the second paragraph of subsection (b), the provisions of
56 this section, at the discretion of the authority, shall not apply to sales and leases of such assisted
57 structures or facilities for nonprofit public purposes.

58 SECTION 5. Subsection (c) of section 89 of chapter 71 of the General Laws, as
59 appearing in the 2014 Official Edition, is hereby amended by adding the following paragraph:-

60 An existing Horace Mann charter school at the time of its renewal pursuant to subsection
61 (dd) may be converted to a commonwealth charter school subject to subsection (i) upon a vote of
62 its board of trustees, followed by a majority of the school faculty or a majority of the parents and
63 guardians of students enrolled at the school signing a petition for such a conversion. School
64 faculty who prior to such a petition have given notice to leave the school the following year
65 because of retirement, resignation, voluntary transfer, or any other reason or who have received
66 notice to leave the school the following year because of involuntary transfer, dismissal or any
67 other reason, shall not be eligible to sign the petition and shall not be counted toward the total
68 number of school faculty members. Parents and guardians of students who will not be enrolled
69 in the school the following school year because the school does not provide education in the
70 specific grade level of the student shall not be eligible to sign the petition and shall not be
71 counted toward the total number of parents and guardians of students enrolled in the school. For
72 petitions of parents and guardians, there shall be available one signature per family unit. When a
73 majority of the school faculty or parents and guardians signs a petition supporting the conversion
74 to a commonwealth charter school, the school administrator shall forward the results of the
75 petition to the board within 30 days for review. In determining whether to approve the
76 conversion, the board shall review the school's original application for a charter, submitted
77 pursuant to subsection (e), and assess whether the conversion to a commonwealth charter

78 necessitates amendments to the charter prior to board approval for the conversion. If the board
79 approves the conversion, the school shall grant priority for enrollment first to students who were
80 actually enrolled in the school in the school year prior to the conversion and to their siblings.

81 SECTION 6. Said section 89 of said chapter 71, as so appearing, is hereby further
82 amended by striking out subsection (i)(1) and inserting in place thereof the following
83 subsection:-

84 (i)(1) Not more than 120 charter schools shall be allowed to operate in the
85 commonwealth at any time, excluding those approved pursuant to paragraph (3) or paragraph
86 (5); provided, however, that of the 120 charter schools, not more than 48 shall be Horace Mann
87 charter schools; provided, however, notwithstanding subsection (c) the 14 new Horace Mann
88 charter schools and any Horace Mann charter school established to serve the student population
89 of a school designated by the department as underperforming or chronically underperforming
90 pursuant to section 1J of chapter 69 shall not be subject to the requirement of an agreement with
91 the local collective bargaining unit prior to board approval; provided, further, that after the
92 charter for these 14 new Horace Mann charter schools and any Horace Mann charter school
93 established to serve the student population of a school designated by the department as
94 underperforming or chronically underperforming pursuant to section 1J of chapter 69 have been
95 granted by the board, the schools shall develop a memorandum of understanding with the school
96 committee and the local union regarding any waivers to applicable collective bargaining
97 agreements; provided, further, that if an agreement is not reached on the memorandum of
98 understanding at least 30 days before the scheduled opening of the school, the charter school
99 shall operate under the terms of its charter until an agreement is reached; provided, further, that
100 not less than 4 of the 14 new Horace Mann charter schools shall be located in a municipality with

101 more than 500,000 residents; and not more than 72 shall be commonwealth charter schools. The
102 board shall not approve a new commonwealth charter school in any community with a
103 population of less than 30,000 as determined by the most recent United States Census estimate,
104 unless it is a regional charter school.

105

106 Applications to establish a charter school shall be submitted to the board annually by
107 November 15. The board shall review the applications and grant new charters in February of the
108 following year; provided that applications to establish the 14 new Horace Mann charter schools
109 under this subsection may be accepted, solicited, and approved by the board at any time during
110 the year. The board further may accept, solicit, and approve applications to establish a Horace
111 Mann or commonwealth charter school to serve the student population served by a district school
112 that has been designated by the department as underperforming or chronically underperforming
113 pursuant to section 1J of chapter 69 or to serve a student population of any school that is located
114 in a district that has been designated by the board as chronically underperforming pursuant to
115 section 1K of chapter 69 at any time during the year; provided that, in considering approval of
116 such an application, the board shall consider the likelihood of success of any turnaround plan
117 proposed or adopted pursuant to sections 1J or 1K of chapter 69.

118 SECTION 7. Subsection (i)(2) of said section 89 of said chapter 71, as so appearing, is
119 hereby amended by striking out, in lines 197-202 inclusive, the second paragraph.

120 SECTION 8. Subsection (i) of said section 89 of said chapter 71, as so appearing, is
121 hereby further amended by adding the following subsection:-

122 (5) Notwithstanding the provisions of this subsection relative to the number of charter
123 schools allowed to operate in the commonwealth or in any district, the board each year may
124 approve up to 12 additional commonwealth charters, commonwealth charter amendments to
125 increase authorized enrollment, or a combination thereof. Any approvals under this paragraph
126 shall be limited to new or expanded commonwealth charter schools in districts or regions where
127 the data released on overall student performance on the statewide assessment system approved
128 by the board is in the bottom 25 percent of all districts in the two years preceding the charter
129 application. The total enrollment authorized by all such approvals in a single fiscal year shall not
130 exceed 1 percent of the total statewide public school enrollment for the previous year as
131 determined by the board.

132 In the event that the number of qualified applicants under this paragraph in any year
133 exceeds 12, the board shall give priority among such qualified applicants to those seeking to
134 establish or expand enrollment in commonwealth charter schools where the demonstrated parent
135 demand for additional public school options is greatest. The board shall apply to all such
136 applicants review and approval standards as rigorous as those applied to all other commonwealth
137 charter applicants. The recruitment and retention and multilingual outreach provisions of
138 paragraph (3) shall apply to any commonwealth charter school authorized under this paragraph,
139 and any new commonwealth charter schools authorized by this paragraph shall be subject to the
140 same requirements regarding student performance standards established in subsection (v) and
141 shall be renewed pursuant to the same standards established in subsection (dd).

142 Nothing in this paragraph shall affect the issuance of commonwealth charters under
143 paragraph (3). The percentages of net school spending set forth in paragraphs (2) and (3) shall
144 not apply to or otherwise operate to limit the board's authority to approve commonwealth

145 charters or commonwealth charter amendments under this paragraph; provided, however, that
146 such percentages shall continue to apply to commonwealth charters issued otherwise than under
147 this paragraph.

148 Except as provided in this paragraph, all otherwise applicable provisions of this section
149 shall apply to commonwealth charters or amendments approved under this paragraph.

150 SECTION 9. Said section 89 of said chapter 71, as so appearing, is hereby further
151 amended by striking out subsection (m) and inserting in place thereof the following subsection:-

152 (m)(1) Charter schools shall be open to all students, on a space available basis, and shall
153 not discriminate on the basis of race, color, national origin, creed, sex, gender identity, ethnicity,
154 sexual orientation, mental or physical disability, age, ancestry, athletic performance, special
155 need, or proficiency in the English language or a foreign language or academic achievement.

156 (2) Charter schools may limit enrollment to specific grade levels and may structure
157 curriculum around particular areas of focus such as mathematics, science or the arts.

158 Upon the commissioner's recommendation and with the board's approval, in order to
159 support a charter school's mission and purpose, a charter school may award in any admissions
160 lottery developed pursuant to subsection (n) added weight to any eligible student applicants who
161 qualify as high-need students, as defined by the board, to the degree such an approach is aligned
162 with the school's mission and purpose and otherwise consistent with its application required
163 under subsection (e). For the purposes of this paragraph, the board's definition of high-need
164 students shall include, but not be limited to, the following: (i) students who have a disability as
165 defined in section 1 of chapter 71B; (ii) limited English-proficient students; (iii) students who
166 qualify for the federal free or reduced lunch program or another successor measure as determined

167 by the department; (iv) children who are homeless or in a foster care placement; and (v) students
168 who are at risk of educational failure due to excessive absenteeism, truancy, dropping out of
169 school, or involvement with the juvenile justice system or other law enforcement agency. Any
170 charter school applicant proposing to use such a weighted lottery system shall submit to the
171 board as part of its application or as a proposed amendment to its charter detailed information
172 regarding the enrollment procedure it intends to implement to effect such an approach.

173 (3) There shall be no application fee for admission to a charter school. There shall be no
174 tuition charge for students attending charter schools.

175 SECTION 10. Said section 89 of said chapter 71, as so appearing, is hereby further
176 amended by striking out subsection (n) and inserting in place thereof the following subsection:-

177 (n)(1) Consistent with any admissions preferences or weights approved by the board
178 pursuant to subsection (m)(2) and this subsection, preference for enrollment in a commonwealth
179 charter school shall be given to students who reside in the city or town in which the charter
180 school is located and to their siblings; provided that priority for enrollment in a commonwealth
181 charter school granted to serve students who are enrolled in a school designated as
182 underperforming or chronically underperforming pursuant to section 1J of chapter 69 shall be
183 given first to students actually enrolled in the school in the school year prior to the charter school
184 opening and to their siblings and second to students who otherwise would be eligible to attend
185 the designated school consistent with the district's assignment policies and the charter school's
186 enrollment procedure approved by the board.

187 Consistent with any admissions preferences or weights approved by the board pursuant to
188 subsection (m)(2) and this subsection, priority for enrollment in a Horace Mann charter school

189 shall be given first to students actually enrolled in the school in the school year prior to the
190 charter school opening and to their siblings; second to other students actually enrolled in the
191 public schools of the district where the Horace Mann charter school is to be located; and third to
192 other resident students; provided that priority for enrollment in a Horace Mann charter school
193 granted to serve students who are enrolled in a school designated as underperforming or
194 chronically underperforming pursuant to section 1J of chapter 69 shall be given first to students
195 actually enrolled in the school in the school year prior to the charter school opening and to their
196 siblings and second to students who otherwise would be eligible to attend the designated school
197 consistent with the district's assignment policies and the charter school's enrollment procedure
198 approved by the board.

199 (2) Subject to approval of the commissioner, a charter school voluntarily may enter into a
200 written agreement with the district or districts from which students attending the charter school
201 will be drawn enabling the charter school to be included in a district's student enrollment system
202 that takes into account parental preferences when determining the school to which a student is
203 assigned.

204 (3) If the total number of students who are eligible to attend and apply to a charter school
205 and who reside in the city or town in which the charter school is located or are siblings of
206 students already attending said charter school, is greater than the number of spaces available, an
207 admissions lottery, including all eligible students applying, shall be held to fill all of the spaces
208 in that school from among the students. If there are more spaces available than eligible applicants
209 from the city or town in which the charter school is located and who are siblings of current
210 students and more eligible applicants than spaces left available, a lottery shall be held to
211 determine which of the applicants shall be admitted; provided, however, that a lottery conducted

212 for Horace Mann charter schools shall reflect the enrollment priorities of this section.
213 Notwithstanding this subsection, upon application by the board of trustees of a charter school or
214 by the persons or entities seeking to establish a charter school, the board may amend or grant a
215 charter designating such school a regional charter school; provided, however, that such regional
216 charter school shall be exempt from the local preference provision of this paragraph; provided
217 further, that such regional charter school shall continue to grant a preference of siblings of
218 currently enrolled students; and provided further, that if the number of applicants remaining is
219 greater than the number of spaces available, such regional charter school shall conduct a single
220 lottery to determine which applicants shall be admitted.

221

222 (4) Subject to approval by the board, school districts or municipalities that rent classroom
223 space to commonwealth charter schools under lease agreements with terms of at least 10 years
224 may require such schools to offer enrollment weights or preferences to students who reside in a
225 specific geographical area in which such school buildings are located as a condition of such lease
226 agreements; provided, however, that within this geographical preference area, the percentage of
227 students who qualify for the free or reduced price lunch program or another successor measure as
228 determined by the department is equal to or higher than the district's overall percentage of
229 students who qualify for this program.

230 Subject to approval by the board, charter schools may voluntarily offer enrollment
231 weights or preferences to students who reside in a specific geographical area within the district in
232 which the school is located; provided, however, that within this geographical preference area, the
233 percentage of students who qualify for the free or reduced price lunch program or another

234 successor measure as determined by the department is equal to or higher than the district's
235 overall percentage of students who qualify for this program.

236 In addition to providing the information pursuant to subsection (e), any charter school
237 that offers geographical enrollment weights or preferences shall include in its application for
238 approval: (i) a definition of the geographical area for which it will offer an enrollment weight or
239 preference; (ii) an explanation of how this weight or preference will support the mission of the
240 charter school and the academic performance of its students; (iii) evidence that within this
241 geographical area there resides an equal or higher percentage of low-income students, as
242 measured by qualification for the free or reduced price lunch program or another successor
243 measure as determined by the department, as in the district as a whole; and (iv) an explanation of
244 how the charter school will target its recruitment and retention efforts for students within this
245 geographical area. When any charter school that chooses to offer a geographical weight or
246 preference seeks charter renewal and intends to continue applying the geographical weight or
247 preference, the board shall consider whether the weighted or preferenced area continues to
248 support the mission of the charter school and the academic performance of its students, as well as
249 whether the area continues to serve an adequate percentage of low-income students to qualify as
250 a geographical weighted or preferenced area under this subsection.

251 In commonwealth charter schools that offer geographical enrollment preferences,
252 students who reside within the geographical preference area and their siblings shall have priority
253 for enrollment in any open seats over students who reside in the city or town in which the charter
254 school is located but outside of the geographical preference area. In Horace Mann charter
255 schools that offer geographical enrollment preferences, priority for enrollment shall be given first
256 to students actually enrolled in the school in the school year prior to the charter school opening

257 and to their siblings; second to students who otherwise would be eligible to attend the designated
258 school consistent with the district's assignment policies and the charter school's enrollment
259 procedure approved by the board.

260 (5) Any charter school applicant proposing to include in its enrollment procedure weights
261 or preferences pursuant to subsection (m)(2) or this subsection shall include in its application to
262 the board detailed information regarding the enrollment procedure it intends to implement to
263 effect any such weights or preferences.

264 (6) In any instance where a charter school approved after January 1, 2011 enrolls more
265 than 20 per cent of its total enrollment from school districts not included in its original charter
266 pursuant to subsection (h) for 2 consecutive years, the charter school shall submit an application
267 to the board for an amendment to its charter that reflects its actual enrollment patterns; provided
268 further that upon renewal of a charter school approved prior to January 1, 2011, the board shall
269 establish a timeline of not less than 5 years for the charter to comply with this requirement.

270

271 Nothing in this section shall be construed to require a charter school to unenroll any
272 student currently in attendance at the time this act takes effect.

273 When a student stops attending a charter school for any reason, the charter school shall
274 fill the vacancy with the next available student on the waitlist for the grade in which the vacancy
275 occurs and shall continue through the waitlist until a student fills the vacant seat. If there is no
276 waitlist, a charter school shall publicize an open seat to the students of the sending district or
277 districts and make attempts to fill said vacant seat. Charter schools shall attempt to fill vacant
278 seats up to February 15, provided, however, that charter schools may but are not required to fill

279 vacant seats after February 15. If a vacancy occurs after February 15, such vacancy shall remain
280 with the grade cohort and shall be filled in the following September if it has not previously been
281 filled. A vacancy occurring after February 15 shall not be filled by adding a student to a lower
282 grade level. Charter schools shall attempt to fill vacant seats up to February 15, excluding seats
283 in the last half of the grades offered by the charter school, and grades 10, 11 and 12. Within 30
284 days of a vacancy being filled, the charter school shall send the name of the student filling such
285 vacancy to the department for the purposes of the department updating its waitlist. Nothing in
286 this paragraph or paragraph (7) shall preclude a charter school, with the board's approval, from
287 filling vacancies during a school year, in lieu of maintaining a waitlist, by holding additional
288 lotteries for those student applicants who have applied for admission to the school for enrollment
289 in the current school year; provided further that the lottery may include any weights or
290 preferences consistent with the school's mission and purpose and approved by the board
291 pursuant to this subsection and subsection (m)(2).

292 (7) The names of students who entered the lottery but did not gain admission shall be
293 maintained on a waitlist, which shall be forwarded to the department not later than June 1 in the
294 year in which the lottery is held. In addition to the names of students, the school shall supply to
295 the department each student's home address, telephone number, grade level and other
296 information the department deems necessary. The department shall maintain a consolidated
297 waitlist for each municipality in order to determine the number of individual students in each
298 municipality seeking admission to charter schools.

299 SECTION 11. Subsection (dd) of said section 89 of said chapter 71, as so appearing, is
300 hereby amended by striking out, in lines 621-624 inclusive, the words "provided, however, that a
301 charter for a Horace Mann charter school shall not be renewed by the board without a majority

302 vote of the school committee and local collective bargaining unit in the district where said
303 charter school is located” and inserting in place thereof the following words:- provided, however,
304 that an amendment or renewal of a charter for a Horace Mann charter school shall be subject to
305 approval by majority vote of the school committee and local collective bargaining unit in the
306 district where the charter school is located only to the extent that its initial charter required such
307 approval.

308 SECTION 12. Subsection (ff) of said section 89 of said chapter 71, as so appearing, is
309 hereby amended by striking out the ninth paragraph and inserting in place thereof the following
310 paragraph:-

311 The department shall, subject to appropriation, provide funding to charter schools for a
312 portion of the per pupil capital needs component included in the charter tuition amount and shall
313 reimburse the sending school districts for said costs. In fiscal year 2011 and thereafter, such
314 funding shall not be less than the per pupil amount provided in fiscal year 2010; but in fiscal year
315 2018 and thereafter, the set amount will be adjusted annually consistent with the new school
316 building construction cost index calculated by the Bureau of Labor Statistics Producer Price
317 Index.

318 SECTION 13. Sections 3 and 4 shall take effect on July 1, 2016.

319 SECTION 14. Section 12 shall take effect on July 1, 2017.

320 SECTION 15. Except as otherwise specified, this act shall take effect upon enactment.