

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

HOUSE No.

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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:-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

for Horace Mann charter schools shall reflect the enrollment priorities of this section.

Notwithstanding this subsection, upon application by the board of trustees of a charter school or by the persons or entities seeking to establish a charter school, the board may amend or grant a charter designating such school a regional charter school; provided, however, that such regional charter school shall be exempt from the local preference provision of this paragraph; provided further, that such regional charter school shall continue to grant a preference of siblings of currently enrolled students; and provided further, that if the number of applicants remaining is greater than the number of spaces available, such regional charter school shall conduct a single lottery to determine which applicants shall be admitted.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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