

SENATE No. 2050

The Commonwealth of Massachusetts

PRESENTED BY:

Sonia Chang-Diaz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act to prevent fiscal abuse in educational collaboratives.

PETITION OF:

NAME:

Sonia Chang-Diaz

DISTRICT/ADDRESS:

-
-

[District]

SENATE No. 2050

By Ms. Chang-Diaz, a petition (subject to Joint Rule 12) of Sonia Chang-Diaz for legislation to prevent fiscal abuse in educational collaboratives. Education.

The Commonwealth of Massachusetts

An Act to prevent fiscal abuse in educational collaboratives.

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

1 SECTION 1. Section 4E of chapter 40 of the General Laws, as appearing in the 2010
2 Official Edition is hereby amended by striking out the second paragraph and inserting in place
3 thereof the following 4 paragraphs:-

4 The education collaborative shall be managed by a board of directors which shall be
5 comprised of 1 person appointed by each member school committee, 1 person appointed by each
6 member charter board of trustees and 1 person appointed by the commissioner of elementary and
7 secondary education. With the exception of the person appointed by the commissioner of
8 elementary and secondary education, all appointed persons shall be either a school committee
9 member, the superintendent of schools or a member of the charter board of trustees; provided,
10 however, that a school committee may appoint a representative other than a school committee
11 member or superintendent if necessary to ensure that the board has the appropriate mix of skills
12 and expertise, including in the areas of educational programming and services, financial controls
13 and operations and governance; provided, further, that the need for appointing a representative
14 other than a school committee member or superintendent, as well as the alternate representative's
15 qualifications, must be documented in writing and submitted to the commissioner of elementary
16 and secondary education by the representative's appointing authority prior to that
17 representative's admittance to the board. The board shall meet at least 6 times in each calendar
18 year. Each member of the board of directors shall be entitled to a vote.

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

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

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

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

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

51 The board of elementary and secondary education shall promulgate regulations setting
52 forth the approval process for education collaboratives. The board of elementary and secondary
53 education shall establish requirements for the written agreement which shall form the basis of the
54 education collaborative. The written agreement shall include, but not be limited to: (1) the
55 purposes of the program or service; (2) the financial terms and conditions of membership of the
56 education collaborative; (3) the method of termination of the education collaborative and of the
57 withdrawal of member school committees; (4) the procedure for admitting new members and for
58 amending the collaborative agreement; (5) the powers and duties of the board of directors of the
59 education collaborative to operate and manage the education collaborative; and (6) any other
60 matter which the member committees deem advisable. The written agreement, and any
61 amendments to the agreement, shall be subject to the written approval of the member school
62 committees, the member charter boards of trustees and the commissioner of elementary and

63 secondary education. Failure to obtain approval for amendments to the written agreement shall
64 render such amendments invalid. Each education collaborative shall keep a copy of the written
65 agreement, including any amendments thereto, and the written approvals of the member school
66 committees, the member charter boards of trustees and the commissioner of elementary and
67 secondary education. The board of elementary and secondary education may revoke a
68 collaborative's approval if the collaborative has not fulfilled any conditions imposed by the
69 board or the commissioner in connection with the approval or the collaborative has violated any
70 provision of its agreement. The commissioner of elementary and secondary education may place
71 the collaborative on a probationary status to allow the implementation of a remedial plan after
72 which, if the plan is unsuccessful, the approval may be summarily revoked.

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

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

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

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

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

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

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

110 Each education collaborative shall keep an accurate account of all its activities and all its
111 receipts and expenditures, including hard copy or electronic receipts of all expenditures greater
112 than 5 dollars, and shall annually cause an independent audit to be made of its accounts. The
113 audit shall result in an audited financial statement prepared in accordance with such generally
114 accepted accounting principles and reporting practices as may from time to time be prescribed by
115 the American Institute of Certified Public Accountants, or its successor organization and
116 examined by an independent certified public accountant in accordance with generally accepted
117 auditing standards for the purpose of expressing an opinion on the audit. The audited financial
118 statement shall include, but not be limited to, detailed information in each of the following areas:
119 (1) transactions between the education collaborative and a related nonprofit organization; (2)
120 transactions or contracts related to real property, rentals or lease agreements; (3) salary changes
121 made to employees of the education collaborative and changes in employment responsibilities
122 that accompanied the salary change; (4) the percentage of the education collaborative's budget
123 spent on administrative expenses; (5) any accounts held by the collaborative that may be
124 discretionarily spent by another person or entity; and (6) the division of costs and expenditures
125 for services for individuals under age 22 and individuals age 22 and above. The state auditor
126 shall develop a form to be used as part of the independent audit to ensure compliance with this
127 section.

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

139 The commissioner of elementary and secondary education, each member school
140 committee and each member charter board of trustees shall certify receipt of the audited financial
141 statement to the state auditor within 45 days of receiving the statement provided that the
142 certification shall state whether the audited financial statement is complete and in compliance
143 with the requirements of this section. The department of elementary and secondary education
144 may develop an interdepartmental service agreement with the state auditor or the operational
145 services division to assist in reviewing financial components of these audits. The state auditor or
146 operational services division may investigate the budget and finances of education collaboratives
147 and their financial dealings, transactions and relationships and shall have the power to examine
148 the records of education collaboratives and to prescribe methods of accounting and the rendering
149 of periodic reports. The department of elementary and secondary education shall also be
150 responsible for making the audited financial statement publicly available in a machine readable
151 format through a searchable online database; provided, however, that the department may
152 designate the state agency with whom the department enters into an interdepartmental service
153 agreement as the party responsible for making the audited financial statement publicly available.
154 The database shall allow users to view information in aggregated and disaggregated forms and
155 shall allow users to easily compare information across collaboratives. If the audited financial
156 statement is not filed within 9 months of the end of the collaborative's fiscal year, the
157 commissioner of elementary and secondary education shall notify the state auditor and the
158 commissioner may suspend the education collaborative's authorization to operate, effective
159 either at the close of the current school year or at such time as the commissioner deems prudent.

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

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

178 with generally accepted auditing standards for the purpose of expressing an opinion on the
179 audited financial statement.

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

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

191 Each education collaborative shall be reviewed by the department of elementary and
192 secondary education on a periodic basis, but not less frequently than every 6 years. Such review
193 shall include, but not be limited to, compliance with the written agreement and any conditions
194 imposed by the board of elementary and secondary education, and with the requirements of this
195 section and any other applicable state and federal laws and regulations.

196 For the purposes of this section, the term "Related nonprofit organization" shall mean a
197 nonprofit organization established under the laws of the commonwealth or any other state: (i) a
198 primary purpose of which is to benefit or further the purposes of an education collaborative or
199 that, on average over a 3-year period, receives more than 50 per cent of its funding from 1 or
200 more education collaboratives; and (ii) which engages in business transactions or business
201 arrangements, including pledges or assignments of collateral and loan guarantees or other
202 contracts of suretyship, with the education collaborative.

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

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

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

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

223 (b) There shall be a special commission to investigate services provided by education
224 collaboratives and related nonprofit organizations, as that term is defined in section 4E of chapter
225 40 of the General Laws, to individuals not enrolled in or employed by elementary or secondary
226 schools in the commonwealth. The commission shall consist of the commissioner of elementary
227 and secondary education or a designee, who shall serve as the chair; the commissioner of
228 developmental services or a designee; the state auditor or a designee; the attorney general or a
229 designee; the house and senate chairs of the joint committee on education; the house and senate
230 chairs of the joint committee on children, families and persons with disabilities; an advocate for
231 developmentally disabled individuals selected by the commissioner of developmental disabilities
232 from a list of 3 persons nominated jointly by The Arc of Massachusetts and the Association of
233 Developmental Disabilities Providers; and a parent of an individual with special needs age 22 or
234 above selected by the commissioner of developmental disabilities from a list of 3 persons
235 nominated jointly by The Arc of Massachusetts and the Association of Developmental
236 Disabilities Providers. The investigation shall include, but not be limited to:

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

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

243 (3) what measures should be taken to ensure proper accounting of and funding for all
244 services provided by education collaboratives and related nonprofit organizations, as that term is
245 defined in section 4E of chapter 40 of the General Laws, for individuals not enrolled in or
246 employed by elementary or secondary schools in the commonwealth; and

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

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

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

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

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

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