SENATE . . . . . No. 2085

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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:

SECTION 1. Section 4E of chapter 40 of the General Laws, as most recently amended by section 2 of chapter 12 of the acts of 2010, is hereby amended by striking out the section in its entirety and inserting in place thereof the following:-

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

“Charter school", commonwealth charter schools and Horace Mann charter schools unless specifically stated otherwise.

“Charter school board”, the board of trustees of a charter school established pursuant to section 89 of chapter 71.

“Commissioner", the commissioner of elementary and secondary education.

“Department", the department of elementary and secondary education.

“District", or "school district", the school department of a city, town, regional school district, or county agricultural school.

“Related for-profit or non-profit organization”, a for-profit or non-profit organization established under the laws of the commonwealth or any other state: (i) that, on average over a 3-year period, receives more than 50 per cent of its funding from 1 or more education collaboratives; or (ii) a primary purpose of which is to benefit or further the purposes of an education collaborative and which engages in business transactions or business arrangements, including pledges or assignments of collateral and loan guarantees or other contracts of suretyship, with the education collaborative.

21 “Superintendent", the superintendent of the district

22 (b) Two or more school committees of cities, towns and regional school districts and
23 boards of trustees of charter schools may enter into a written agreement to provide shared
24 programs and services, including instructional, administrative, facility, community, or any other
25 services; provided that a primary purpose of such programs and services shall be to complement
26 the educational programs of member school committees and charter schools in a cost-effective
27 manner. The association of school committees and charter school boards which is formed to
28 deliver the programs and services shall be known as an education collaborative.

29 (c) The education collaborative shall be managed by a board of directors which shall be
30 comprised of 2 persons appointed by each member school committee or member charter school
31 board: 1 of whom shall be a school committee member or member of the charter school board;
32 and 1 of whom shall be either the superintendent or the administrator of special education or a
33 person who holds a comparable role. The commissioner shall appoint an individual to serve as a
34 voting member of the education collaborative board of directors; provided that, to the extent
35 feasible, the commissioner shall appoint an individual who has expertise in one or more of the
36 following areas: educational programming and services, finance, budgeting and management
37 oversight. Each member of the board of directors shall be entitled to a vote. No member of the
38 board of directors shall receive an additional salary or stipend for their service as a board
39 member. No member of the board of directors of an education collaborative shall serve as a
40 member of a board of directors or as an officer or employee of any related for-profit or non-
41 profit organization. The board of directors shall elect a chairperson from its members and
42 provide for such other officers as it may determine are needed, and may establish advisory
43 committees as desired. Each collaborative board shall meet not fewer than 6 times annually.

44 Each collaborative board member shall complete training on the roles and responsibilities
45 of their office within 30 days of the member's appointment. Said training shall include, but not
46 be limited to, a review of the open meeting law, public records law, conflict of interest law,
47 special education law, the budgetary process, and the fiduciary and management oversight
48 responsibilities of board members. The department shall develop and provide the training, with
49 input from relevant stakeholders, and shall promulgate regulations relative to the certification of
50 completion of said training.

51 The written agreement which shall form the basis of the education collaborative shall set
52 forth the following: (1) the mission, purpose, and focus of the collaborative; (2) the program or
53 service to be offered by the collaborative; (3) the financial terms and conditions of membership
54 of the education collaborative; (4) the detailed procedure for the preparation and adoption of an
55 annual budget; (5) the method of termination of the education collaborative and of the
56 withdrawal of member school committees and charter school boards; (6) the procedure for
57 admitting new members and for amending the collaborative agreement; (7) the powers and duties
58 of the board of directors of the education collaborative to operate and manage the education

59 collaborative; and (8) any other matter not incompatible with law which the member school
60 committees and charter school boards consider advisable. The agreement, and all subsequent
61 amendments, must be approved by the member school committees and member charter school
62 boards, and by the board of elementary and secondary education upon the recommendation of
63 the commissioner. A member school committee or member charter school board shall not
64 delegate the authority to approve amendments to the collaborative agreement to any other person
65 or entity. Each education collaborative, each member school committee or member charter
66 school board, and the department shall maintain a copy of the collaborative agreement, including
67 any amendments thereto.

68 The board of directors of the education collaborative shall appoint a treasurer who may
69 be a treasurer of a city, town or regional school district belonging to the collaborative. The
70 treasurer may, subject to the direction of the board of directors of the education collaborative,
71 receive and disburse all money belonging to the collaborative without further appropriation. The
72 treasurer shall give bond annually for the faithful performance of his duties as collaborative
73 treasurer in a form approved by the department of revenue and in a sum not less than the amount
74 established by the department, as shall be fixed by the board of directors of the education
75 collaborative. The board of directors of the education collaborative in its discretion may pay
76 compensation to the treasurer for his services. No member of the board of directors or employee
77 of the education collaborative shall be eligible to serve as treasurer of the collaborative.

78 The treasurer of the education collaborative board of directors shall have the authority to
79 make appropriate investments of the money of the collaborative consistent with section 55B of
80 chapter 44. A business manager or employee of the education collaborative with responsibilities
81 similar to those of a town accountant shall be subject to section 52 of chapter 41 and shall not be
82 eligible to hold the office of treasurer of the collaborative or hold any responsibilities for the
83 receipt or disbursement of money.

84 The board of directors of an education collaborative may borrow money, enter into long-
85 term or short-term loan agreements or mortgages and apply for state, federal or corporate grants
86 or contracts to obtain funds necessary to carry out the purpose for which such collaborative is
87 established; provided, however, that the board of directors has determined that any borrowing,
88 loan or mortgage is cost-effective and in the best interest of the collaborative and its member
89 municipalities and charter schools. The borrowing, loans or mortgages shall be consistent with
90 the written agreement and articles of incorporation of the education collaborative and shall be
91 consistent with standard lending practices. The board of directors of an education collaborative
92 shall notify each member school committee and charter school board within 30 calendar days of
93 applying for real estate mortgages.

94 (d) Each education collaborative shall adopt and maintain a financial accounting system,
95 in accordance with generally accepted accounting principles as prescribed by the governmental
96 accounting standards board and any supplemental requirements prescribed jointly by the

97 commissioner of elementary and secondary education and the commissioner of revenue, in
98 consultation with the state auditor. Each collaborative shall maintain books of original entry,
99 general and subsidiary ledgers, related accounting records, and as appropriate, memorandum
100 records, work sheets, supporting cost allocations and computations, payroll and expenditure
101 warrants, written contracts, staff logs, appointment books, evidence of teaching credentials or
102 approval by programs, teaching schedules, canceled checks and paid invoices. The department,
103 the state auditor, and the department of revenue may, at their discretion, review or audit any part
104 of an education collaborative's records to ascertain whether the student, personnel and financial
105 data reported by a collaborative are accurate, to ensure that the collaborative is complying with
106 the applicable laws and regulations, and to determine whether the collaborative is maintaining
107 effective controls over revenues, expenditures, assets, and liabilities. The department may enter
108 into an interdepartmental service agreement with the operational services division to assist in
109 reviewing collaborative finances.

110 Each board of directors of an education collaborative shall annually prepare financial
111 statements, including: (1) a statement of net assets; (2) a statement of revenues, expenditures,
112 and changes in net assets; and (3) such supplemental statements and schedules as may be
113 required by regulation. Each board of directors of an education collaborative shall annually cause
114 an independent audit to be made of its financial statements consistent with generally accepted
115 governmental auditing standards, and shall discuss and vote to accept the audit report at an open
116 meeting of the board. Each board of directors shall file such audit report and any related
117 management letters annually on or before January 1 with the department and the state auditor,
118 and shall transmit a copy of such audit report and any related management letters to each
119 member school committee and charter school board. The purchase by a government unit of
120 social service programs, as defined in section 22N of chapter 7, from a collaborative, shall also
121 require the collaborative to adhere to the uniform system of financial accounting, allocation,
122 reporting and auditing requirements of the bureau of purchased services of the operational
123 services division, in accordance with the requirements of section 22N of chapter 7.

124 The audited financial statements, accompanying notes, and supplemental schedules shall
125 disclose: (1) transactions between the education collaborative and any related for-profit or non-
126 profit organization; (2) transactions or contracts related to the purchase, sale, rental, or lease of
127 real property; (3) the names, duties, and total compensation of the five most highly compensated
128 employees; (4) the amounts expended on administration and overhead; (5) any accounts held by
129 the collaborative that may be spent at the discretion of another person or entity; (6) the amounts
130 expended on services for individuals age 22 and above; and (7) any other items as may be
131 required by regulation.

132 The department shall also be responsible for making information from the audits publicly
133 available, in a machine readable format, through a searchable online database; provided,
134 however, that the department may designate the operational services division as the party
135 responsible for making such information publicly available online. The database shall allow

136 users to view information in aggregated and disaggregated forms and shall allow users to easily
137 compare information across different education collaboratives.

138 (e) Each education collaborative shall submit an annual report, no later than January 1, to
139 the commissioner, to each member school committee, and to each member charter school board.
140 The annual report shall be in such form as may be prescribed by the board of elementary and
141 secondary education and shall include, but not be limited to: (1) information on the programs and
142 services provided by the education collaborative, including discussion of the cost-effectiveness
143 of such programs and services, and progress made towards achieving the objectives and purposes
144 set forth in the collaborative agreement; and (2) audited financial statements and the independent
145 auditor's report, as described in subsection (d). Each education collaborative shall publish such
146 annual report on its internet website and shall provide a printed hard copy of the most recent
147 annual report to members of the public upon request.

148 (f) The board of directors of the education collaborative may employ an executive officer
149 who shall serve under the general direction of the board and who shall be responsible for the care
150 and supervision of the education collaborative. Said executive officer shall not serve as a board
151 member, officer or employee of any related for-profit or non-profit organization.

152 The board of directors of the education collaborative shall be considered to be a public
153 employer and have the authority to employ personnel, including teachers, to carry out the
154 purposes and functions of the education collaborative. No person shall be eligible for
155 employment by the board of directors as an instructor of children with severe special needs,
156 teacher of children with special needs, teacher, guidance counselor, school psychologist,
157 adjustment counselor, social worker, library media specialist, principal, supervisor, director,
158 administrator of special education, assistant superintendent of schools or superintendent of
159 schools unless the person has been granted a certificate by the commissioner under section 38G
160 of chapter 71 or an approval under the regulations promulgated by the board of elementary and
161 secondary education under chapter 74 with respect to the type of position for which he seeks
162 employment; provided, however, that nothing herein shall be construed to prevent a board of
163 directors of an education collaborative from prescribing additional qualifications. A board of
164 directors of an education collaborative may, upon its request, be exempted by the commissioner
165 for any 1 school year from the requirements of this section to employ certified or approved
166 personnel when compliance therewith would in the opinion of the commissioner constitute a
167 great hardship. No employee of an education collaborative shall be employed at any related for-
168 profit or non-profit organization.

169 (g) The trustee, trustees or governing board of any related for-profit or non-profit
170 organization shall file a copy of the annual written report for the preceding fiscal year as required
171 under section 8F of chapter 12, including all attachments and schedules, with the commissioner
172 within 10 days of filing said report with the attorney general; provided that any related for-profit
173 or non-profit organization not required to submit a complete audited financial statement under

174 section 8F of chapter 12 shall file a copy of said statement with the commissioner by January 1.
175 The audited financial statement shall be prepared and examined by an independent certified
176 public accountant in accordance with generally accepted auditing standards for the purpose of
177 expressing an opinion on the audited financial statement.

178 (h) The education collaborative shall be considered to be a public entity and shall have
179 standing to sue and be sued to the same extent as a city, town or regional school district. An
180 education collaborative, acting through its board of directors, may, subject to chapter 30B, enter
181 into contracts for the purchase of supplies, materials and services and for the purchase or leasing
182 of land, buildings and equipment as considered necessary by the board of directors.

183 A school committee of a city, town or regional school district or charter school board
184 may authorize the prepayment of monies for an educational program or service of the education
185 collaborative to the treasurer of an education collaborative, and the city, town or regional school
186 district or charter school treasurer shall be required to approve and pay the monies in accordance
187 with the authorization of such school committee or charter school board.

188 (i) Each education collaborative shall be required to establish and maintain an internet
189 website that allows the public at no cost to search for and obtain: (1) a list of the members of the
190 board of directors of the education collaborative; (2) copies of the minutes of open meetings held
191 by the board of directors, which shall be posted within 30 days after the board has approved such
192 minutes; (3) a copy of the written agreement, and any subsequent amendments to the agreement;
193 and (4) a copy of the annual report required under subsection (e).

194 (j) The department shall annually furnish a supplemental report on the Massachusetts
195 Comprehensive Assessment System performance results of students served by each education
196 collaborative.

197 (k) The department shall, at least once every 6 years, review and evaluate the programs
198 and services provided by each education collaborative. Such review shall, at a minimum, assess
199 compliance with the written agreement and any conditions imposed by the board of elementary
200 and secondary education, and with the requirements of this section and any other applicable state
201 and federal laws and regulations.

202 (l) Upon receipt of information regarding an education collaborative which, in the
203 opinion of the commissioner, indicates the presence of circumstances at the collaborative that
204 impede its viability or demonstrate deficiencies in programmatic quality or significant
205 malfeasance, financial or otherwise, by any board member or employee of the collaborative, the
206 commissioner may place such collaborative on probationary status to allow the implementation
207 of a remedial plan. If such plan is unsuccessful, the commissioner may direct school districts and
208 charter schools to withhold payments of public funds to the collaborative, and may, in
209 consultation with the secretary of administration and finance, withhold state funds being directed
210 to the collaborative; provided further that the board of elementary and secondary education may

211 suspend or revoke for cause the written agreement of an education collaborative upon the
212 recommendation of the commissioner. Any withholding of funds that occurs under this
213 paragraph shall conclude when the commissioner finds and communicates in writing to the
214 member school committees and member charter school boards that sufficient corrective actions
215 are being taken by the collaborative to address the concerns that resulted in the withholding of
216 funds.

217 (m) The board of elementary and secondary education shall promulgate, amend and
218 rescind such rules and regulations as may be necessary to carry out the provisions of this section.
219 At a minimum, the board shall promulgate regulations which prescribe: (1) requirements and
220 standards for the amount of cumulative surplus revenue that may be held by an education
221 collaborative at the end of a fiscal year; and (2) requirements and guidelines for administrative
222 proceedings conducted pursuant to subsection (l).

223 SECTION 2. The department of elementary and secondary education shall develop a
224 model collaborative agreement that addresses the requirements and standards for approval within
225 6 months of the effective date of this act. The model agreement, which may be used by existing
226 or future education collaboratives formed under section 4E of chapter 40 of the General Laws,
227 shall be made available on the department's website.

228 SECTION 3. Any education collaborative formed under section 4E of chapter 40 of the
229 General Laws prior to the effective date of this act shall revise its agreement to conform to the
230 provisions of said section 4E, as amended by this act, and shall resubmit such revised agreement
231 to member school committees, member charter school boards of trustees and the board of
232 elementary and secondary education for approval within 12 months of the effective date of this
233 act.

234 SECTION 4. An education collaborative formed under section 4E of chapter 40 of the
235 General Laws shall not provide services to individuals over the age of 22 unless the commission
236 established pursuant to section 5 of this act has issued a determination otherwise; provided,
237 however, that an education collaborative providing services to individuals over the age of 22
238 prior to the effective date of this act shall be allowed to continue the provision of such services.

239 SECTION 5. There shall be a special commission to study the role of education
240 collaboratives. The commission shall consist of 11 members: the house and senate chairs of the
241 joint committee on education, or their designees, who shall serve as co-chairs of the commission;
242 the secretary of education, or his designee; the commissioner, or his designee; the speaker of the
243 house of representatives, or his designee; the president of the senate, or her designee; a member
244 of the house of representatives appointed by the minority leader; a member of the senate
245 appointed by the minority leader; and 3 persons to be appointed by the secretary of education, 1
246 of whom shall be selected from a list of 3 persons nominated by the Massachusetts Association
247 of School Superintendents, 1 of whom shall be selected from a list of 3 persons nominated by the

248 Massachusetts Association of School Committees, and 1 of whom shall be selected from a list of
249 3 persons nominated by the Massachusetts Organization of Education Collaboratives.

250 The commission shall examine, report on, and make recommendations on topics
251 including, but not limited to: (1) whether a statewide network of education collaboratives should
252 be established to implement new programs and provide technical assistance in partnership with
253 the department of elementary and secondary education, and if so, how such network should be
254 organized and funded; (2) whether education collaboratives are appropriate settings for providing
255 programs and services to developmentally disabled adults over the age of 22, and if so, what
256 measures should be taken to ensure proper accounting of and funding for all services provided by
257 education collaboratives and related for-profit and non-profit organizations, as that term is
258 defined in section 4E of chapter 40 of the General Laws, for individuals not enrolled in or
259 employed by elementary or secondary schools in the commonwealth; (3) how to maximize the
260 efficiency and capacity of existing education collaboratives; (4) the appropriate role and
261 relationship, if any, between education collaboratives and related for-profit and non-profit
262 organizations; (5) appropriate compensation levels and authority of collaborative management
263 employees; (6) the merits of merging or consolidating existing collaboratives, including the
264 effect on collective bargaining agreements, staff, operational systems, and debt obligations, and
265 whether or not districts and students would benefit from the merger of existing collaboratives;
266 and (7) the provision of non-education related services by education collaboratives to other
267 government entities and the appropriateness and effect of those provisions on the core mission
268 and purpose of the collaborative.

269 The commission shall consult with and solicit input from various persons and groups,
270 including, but not limited to: the attorney general's office; the state auditor's office; the inspector
271 general's office; the department of developmental services; the division of local services; the
272 executive directors of education collaboratives of varying size and scope in the commonwealth;
273 teachers from education collaboratives of varying size and scope in the commonwealth; the
274 chairs of the joint committee on children, families and persons with disabilities; organizations
275 representing individuals with developmental disabilities, including the Arc of Massachusetts and
276 the Association of Developmental Disability Providers; and associations representing special
277 education administrators and other educational administrators, school business officers,
278 municipal officials and charter schools.

279 The first meeting of the commission shall take place within 45 days after the effective
280 date of this act. The commission shall file a report containing its recommendations, including
281 legislation and regulations necessary to carry out its recommendations, with the clerks of the
282 house and senate not later than 12 months following the first meeting of the commission.