SENATE DOCKET, NO. 2166 FILED ON: 1/19/2012

SENATE . . . . . No. 2197

The Commonwealth of Massachusetts

PRESENTED BY:

Frederick E. Berry

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 promoting excellence in public schools.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Frederick E. Berry	☐ *[District]* ☐
Steven A. Baddour	☐ *[District]* ☐

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SENATE . . . . . No. 2197

By Mr. Berry, a petition (subject to Joint Rule 12) (accompanied by bill, Senate, No. 2197) of Frederick E. Berry and Steven A. Baddour for legislation to promote excellence in public schools. Education.

The Commonwealth of Massachusetts

An Act promoting excellence in public schools.

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 1B of chapter 69 of the General Laws as appearing in the 2008 Official Edition is hereby amended by striking out the thirteenth paragraph and inserting in place thereof the following paragraph:-

For the purposes of this chapter and chapter 71, educator evaluation standards shall mean the standards and related provisions of 603 CMR 35.00, et seq. as amended from time to time. Educator evaluation standards and the comprehensive education evaluation system adopted by the board based on such standards shall serve as an exemplar for adoption or adaptation by districts pursuant to section 38 of chapter 71 for employees covered by the educator evaluation standards. Subject to appropriation for such purposes, the department, with approval from the board, shall develop a training program for evaluators that include methods to promote inter-rater reliability. The training program may be delivered by the department, school districts, or through a department approved provider.

SECTION 2. Section 38 of chapter 71 of the General Laws as appearing in the 2008 Official Edition is hereby amended by striking out the third, fourth, fifth and sixth paragraphs and inserting in place thereof the following five paragraphs:-

Performance standards for teachers and other school district employees shall be established by the school committee upon the recommendation of the superintendent, provided that where teachers are represented for collective bargaining purposes, all teacher performance standards shall be determined as follows. Each school district shall implement a comprehensive educator evaluation system no later than the school year which begins in calendar year 2013. A school district and the exclusive bargaining representative of its educators if any shall decide whether to implement the model evaluation system designed by the department pursuant to the board's educator evaluation standards or whether to develop an alternative evaluation system

24 consistent with the scope and purpose of the board's educator evaluation standards. If the parties
25 are unable to agree on an alternative evaluation system following a period of good faith
26 collective bargaining, then the school committee shall implement the model system designed by
27 the department. All alternative evaluation systems shall be submitted to the department for its
28 review and approval prior to their implementation. If the department does not approve a school
29 district's alternative evaluation system, the school district shall implement the model system
30 designed by the department. Until a school district and the exclusive bargaining representative of
31 its educators reach agreement on an alternative evaluation system and it receives approval from
32 the department, the model system designed by the department shall serve as the evaluation plan.
33 The results of such evaluations shall be used in decisions to hire, grant professional teacher
34 status, transfer,

35 promote, lay off, dismiss, demote or remove an employee covered by the educator
36 evaluation standards pursuant to sections 41, 42, 42B and 63. Any person subject to the educator
37 evaluation standards who receives a summative rating of unsatisfactory on one or more standards
38 may request a re-evaluation from a second evaluator. The school district shall create a list of at
39 least 2 evaluators to serve as second evaluators. The school district shall provide the union with
40 an opportunity to submit additional names of teacher evaluators who shall be available to serve
41 as second evaluators and who shall be added to the list created and established by the school
42 district. The school district and union shall collectively bargain the criteria used to add a teacher
43 evaluator to the list. The school district will assign a second evaluator from the list. A teacher
44 shall not challenge the selection of the second evaluator or his or her rating. Nothing in this
45 section shall prohibit a school district and the exclusive bargaining unit of its educators from
46 agreeing to a peer evaluation process as permitted under state regulations that could be used to
47 meet requirements for the selection of second evaluators under this section.

48 If the second evaluator disagrees with the original evaluation, the superintendent shall
49 make the final decision to require a directed improvement plan or not for the person. If no re-
50 evaluation is requested or if the re-evaluation confirms a summative rating of unsatisfactory in
51 one or more standards, the person shall be placed on a directed improvement plan that shall last
52 no longer than one school year. After the improvement plan is completed, an evaluator shall
53 determine if such person has achieved proficiency in all areas that were deemed unsatisfactory. If
54 the evaluator determines that such proficiency was not achieved, such person may request a
55 second evaluator. The school district shall select the second evaluator from the list established
56 pursuant to this section. In no event shall the second evaluator be the same person who
57 conducted any previous evaluations of the person. If the second evaluator disagrees with the
58 original evaluation after the improvement plan is completed, the superintendent shall make the
59 final decision as to whether the person has achieved proficiency in all areas that were deemed
60 unsatisfactory.

61 Beginning with the 2013 school year, the superintendent shall require each evaluator in
62 the school district to take the training program developed by the department pursuant to section

63 1B of chapter 69 before undertaking evaluations in the 2013 school year and future years.
64 Evaluators shall only be required to complete the training program once. The department may,
65 with the board's approval, require supplemental trainings for evaluators if substantive changes to
66 the training program for evaluators are made.

67 Subject to appropriation, each school district shall be reimbursed in accordance with
68 section 60 of chapter 15 for reasonable costs incurred for evaluator training and for conducting
69 evaluations of employees covered by the educator evaluation standards.

70 SECTION 3. Section 41 of chapter 71 of the General Laws as appearing is hereby
71 amended by striking out the first paragraph and inserting in place thereof the paragraph:-

72 For the purposes of this section and section 42, a teacher, school librarian, school
73 adjustment counselor, school nurse, school social worker or school psychologist who has served
74 in the public schools of a school district for 3 previous consecutive school years on a full-time
75 basis shall be considered a teacher and shall be eligible for professional teacher status as
76 provided in section 42, provided that the teacher has achieved ratings of proficient or exemplary
77 on each performance standard and for overall educator

78 performance during his or her third consecutive school year of service. Teachers who
79 have not achieved full-time status for 3 previous consecutive years owing to time away from
80 work permissible under a collective bargaining agreement shall still be eligible for professional
81 status provided that the teacher has completed at least 3 cumulative years of service and achieved
82 ratings of proficient or exemplary on each performance standard and for overall educator
83 performance during his or her third year of service. If a teacher does not receive the ratings
84 required to be eligible for professional teacher status, the superintendent may, upon the
85 recommendation of the principal, grant such teacher a 1 year extension of provisional status to
86 achieve such ratings, provided that the extension is consistent with the best interests of the
87 students and district. The superintendent may, upon the recommendation of the principal, award
88 professional teacher status to a teacher who had previously attained professional teacher status in
89 another school district, provided that the teacher voluntary resigned or was honorably dismissed
90 from the other district within a reasonable period before being hired by the current district and
91 that the teacher achieves a rating of at least proficient on every standard and overall on his or her
92 summative evaluation in his or her first year in the current school district. A teacher without
93 professional teacher status shall be notified in writing on or before June fifteenth whenever such
94 person is not to be employed for the following school year.

95 SECTION 4. Section 42 of said chapter 71 as so appearing is hereby amended by striking
96 out the fifth paragraph and inserting in place thereof the following paragraph:-

97 At the arbitral hearing, the teacher and the school district may be represented by an
98 attorney or other representative, present evidence and call witnesses. The school district shall
99 bear the burden of proving the grounds for dismissal consistent with this section. If the basis for

100 the dismissal is incompetency or failure on the part of the teacher to satisfy teacher performance
101 standards or if a teacher has received 2 summative ratings of unsatisfactory within a 5 year
102 period, the district shall not be required to offer a second improvement plan following the second
103 rating. A teacher with professional teacher status may seek review of a dismissal decision within
104 thirty days after receiving notice of dismissal by filing a petition for arbitration with the
105 commissioner. The arbitral hearing shall commence within 75 days of the notice of dismissal and
106 conclude within 120 days of the notice of dismissal. These deadlines may be extended by the
107 arbitrator for good cause shown but in no event longer than 45 days. The arbitrator shall issue her
108 or his decision within 30 days of the close of the hearing. Evaluation documents developed
109 pursuant to the educator evaluation standards shall be admissible, deemed to be substantial
110 evidence and shall constitute prima facie evidence of the grounds for dismissal. Each party shall
111 be allotted equal time to present its case in chief and rebuttal. In determining whether either party
112 has proven grounds for dismissal consistent with this section, the arbitrator shall consider the
113 best interests of the students in the district and the need for the elevation of performance
114 standards and shall not consider a teacher's seniority or length of service. The school district and
115 union shall have the right to collectively bargain an alternative decision-making body for the
116 dismissal proceedings in the form of a review panel composed of teachers and principals with a
117 history of exemplary performance ratings, provided all other factors associated with the
118 dismissal hearing are consistent with those of the arbitral hearing described in this section.
119 Unless the district and union agree on an alternative decision making body, the procedure
120 described above shall govern all arbitral proceedings under this section.

121 SECTION 5. Said section 42 of said chapter 71 as so appearing is hereby further
122 amended by striking out the seventh paragraph and inserting in place thereof the following
123 paragraph:-

124 Neither this section nor section 41 shall affect the right of a superintendent to lay off
125 teachers pursuant to reductions in force or reorganization resulting from declining enrollment or
126 other budgetary reasons. The school committee, in consultation with the superintendent, shall
127 establish the selection criteria for layoffs of principals, teachers, and other school district
128 employees. Such selection criteria as applied to a person subject to the educator evaluation
129 standards shall be primarily based on certifications, merit and ability, including results from
130 performance evaluations, and other factors related to job performance and the best interests of
131 the students in the school or district and secondarily on relevant experience and seniority or
132 length of service. If 2 or more educators are of equal certifications, merit and ability, including
133 results of performance standards, seniority shall be the deciding factor.

134 SECTION 6. Section 42B of said chapter 71 as so appearing is hereby amended by
135 striking out the first paragraph and inserting in place thereof the following paragraph: -

136 The provisions of this chapter relating to school personnel granted certificates in
137 accordance with section 38G shall apply to all such school personnel employed by regional

138 school districts. Any such school personnel who have provisional or professional teacher status
139 or other rights under section 41 in a particular school district, whose positions are superseded by
140 reason of the establishment and operation of a regional school district, shall be elected to fill
141 available positions primarily based on certifications, merit and ability, including results from
142 performance evaluations, and other factors related to job performance and the best interests of
143 the students in the school or district, and secondarily on relevant experience and seniority or
144 length of service, providing both the principal and teacher agree on such election or assignment,
145 but if 2 or more of such teachers are of equal certifications, merit and ability, including results of
146 performance standards, seniority shall be the deciding factor. If elected the person shall be
147 employed with the same provisional or professional teacher status by the regional school district.

148 SECTION 7. Section 42B of said chapter 71 as so appearing is hereby amended by
149 striking out the fourth paragraph.

150 SECTION 8. Said section 42B of said chapter 71 as so appearing is hereby amended by
151 striking the seventh paragraph and inserting in place thereof the following paragraph:-

152 Any such school personnel, employed by a regional school district, whose position is
153 abolished or eliminated by reason of the disestablishment and discontinuance of the regional
154 school district or the withdrawal of a member community from such district shall be employed
155 by one of the withdrawing city or town school committees, and if any such personnel have such
156 status, such personnel shall be employed by such city or town, school committee with the same
157 status. In the event that there are not sufficient teaching positions available in the withdrawing
158 city or town school systems, such personnel shall be offered the available positions primarily
159 based on certifications, merit and ability, including results from performance evaluations, and
160 other factors related to job performance and the best interests of the students in the school or
161 district, and secondarily on relevant experience and seniority or length of service, providing both
162 the

163 principal and teacher agree on such selection or assignment, but if 2 or more educators
164 are of equal certifications, merit and ability, including results of performance standards, seniority
165 shall be the deciding factor. All such personnel so employed by a city or town school district
166 shall initially be placed on the salary schedule of such city or town school district so that the
167 compensation paid to such school personnel shall not be less than the compensation received by
168 such school personnel while previously employed by the regional school district. Such school
169 personnel also shall be given credit by the city or town school committee for all accumulated
170 sick time, accumulated time towards service with such status, and accumulated sabbatical leave
171 years of service, and for terminal compensation due such school personnel on the termination of
172 such service.

173 SECTION 9. The first paragraph of section 59B of said chapter 71 as so appearing is
174 hereby amended by striking out the third sentence and inserting in place thereof the following
175 five sentences :-

176 Principals employed under this section shall be responsible, consistent with district
177 personnel policies and budgetary restrictions and subject to the approval of the superintendent,
178 for hiring all teachers, athletic coaches, instructional or administrative aides, and other personnel
179 assigned or transferred to the school and, where applicable, shall be primarily based on
180 certifications, merit and ability, including results from performance evaluations, and other factors
181 related to job performance and the best interests of the students in the school or district, and
182 secondarily on relevant experience and seniority or length of service, and provided that both the
183 principal and the educator mutually agree to the hiring and assignment. If 2 or more are of equal
184 certifications, merit and ability, including results of performance standards, seniority shall be the
185 deciding factor. Principals employed under this section shall be responsible for terminating such
186 personnel subject to review and prior approval by the superintendent and subject to the
187 provisions of this chapter. If a teacher refuses the only available position to him or her in the
188 district, provided that the principal has consented to his or her placement, the teacher will not be
189 entitled to paid leave. The school district and the union shall collectively bargain the amount of
190 paid leave provided to the teacher if he does not find a mutually agreed upon position, provided
191 that no teacher shall be entitled to paid leave for more than 12 months after the teacher is unable
192 to secure a mutually agreed upon position at a school in the school district.

193 SECTION 10. As used in this act, the term school district shall also mean regional school
194 district and the term regional school district shall also mean school district.

195 SECTION 11. This act shall take effect on January 1, 2013. No collective bargaining
196 agreements entered into prior to that date shall be altered, impaired or otherwise affected by any
197 conflicting provision of this act. The application of this act to persons subject to the educator
198 evaluation standards shall be subject to collective bargaining or a collective bargaining
199 agreement only where expressly permitted in this act and in the furtherance of the full
200 implementation of the purpose of this act, which is to institute a comprehensive, fair and rigorous
201 educator evaluation system that provides the basis for merit-based decision-making in the hiring,
202 retention, transfer, remediation and dismissal of teachers and school administrators.