

An Act to Further Narrow the Achievement Gap

Whereas, the deferred operation of this act would tend to defeat its purpose, which is to provide for innovation into school districts and prioritize improvement in underperforming schools, and increased expanded public school choice by increasing the number of charter schools and by improving access and affordability of appropriate facilities for charter schools and their students, therefore it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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 1J of chapter 69 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended in subsection (l) by striking out the following words:- “or (3) consistent with the requirements of subsection (a), the school is chronically underperforming.” and inserting in place thereof the following:- “(3) the school has improved and the conditions created under this section are critical to the school’s improvement and shall remain in place, or (4) consistent with the requirements of subsection (a), the school is chronically underperforming.”

SECTION 2. Said chapter 69 is hereby further amended by inserting, after section 1J, the following new section:-

Section 1J^{1/2}. (a) The commissioner of elementary and secondary education may, on the basis of student performance data collected pursuant to section 1I, a school or district review performed under section 55A of chapter 15, or regulations adopted by the board of elementary and secondary education, designate 1 or more schools in a school district other than a Horace Mann charter school as priority schools prior to being designated underperforming or chronically underperforming. The board shall adopt regulations establishing standards for the commissioner to make such designations on the basis of data collected pursuant to section 1I or information from a school or district review performed under section 55A of chapter 15. Upon the release of the proposed regulations, the board shall file a copy thereof with the clerks of the house of representatives and the senate who shall forward the regulations to the joint committee on education. Within 30 days of the filing, the committee may hold a public hearing and issue a report on the regulations and file the report with the board. The board, pursuant to applicable law, may adopt final regulations making revisions to the proposed regulations as it deems appropriate after consideration of the report and shall forthwith file a copy of the regulations with the chairpersons of the joint committee on education and, not earlier than 30 days of the filing, the board shall file the final regulations with the state secretary. Schools that score in the

lowest 20 percent statewide among schools serving common grade levels on a single measure developed by the department that takes into account student performance data and, beginning on July 1, 2013 improvement in student academic performance, shall be deemed eligible for designation as priority.

In adopting regulations allowing the commissioner to designate a school as priority, the board shall ensure that such regulations take into account indicators of school quality in making determinations regarding underperformance or chronic underperformance, such as student attendance, dismissal rates and exclusion rates, promotion rates, graduation rates or the lack of demonstrated significant improvement for 2 or more consecutive years in core academic subjects, either in the aggregate or among subgroups of students, including designations based special education, low-income, English language proficiency and racial classifications. A school may be designated priority by the commissioner if any one of its subgroup scores are among the lowest performing subgroups in the commonwealth.

A priority school described in the following subsections shall operate in accordance with laws regulating other public schools, except as such provisions may conflict with this section. A student who is enrolled in a school at the time it is designated as priority shall retain the ability to remain enrolled in the school while remaining a resident of the district if the student chooses to do so.

(b) Upon the designation of a school as priority school in accordance with regulations developed pursuant to this section, the superintendent of the district, with approval by the commissioner, shall create a priority plan for the school, under subsections (b) to (e), inclusive.

(c) In creating the priority plan in subsection (b) the superintendent shall include provisions intended to maximize the rapid academic achievement of students at the school and shall, to the extent practicable, base the plan on student outcome data, including, but not limited to: (1) data collected pursuant to section 1I or information from a school or district review performed under section 55A of chapter 15; (2) student achievement on the Massachusetts Comprehensive Assessment System; (3) other measures of student achievement, approved by the commissioner; (4) student promotion and graduation rates; (5) achievement data for different subgroups of students, including low-income students as defined in chapter 70, limited English-proficient students and students receiving special education; and (6) student attendance, dismissal rates and exclusion rates.

The superintendent shall also include in the creation of the priority plan, the following: (1) steps to address social service and health needs of students at the school and their families, to help

students arrive and remain at school ready to learn; provided, however, that this may include mental health and substance abuse screenings; (2) steps to improve or expand child welfare services and, as appropriate, law enforcement services in the school community, in order to promote a safe and secure learning environment; (3) steps to improve workforce development services provided to students and their families at the school, to provide students and families with meaningful employment skills and opportunities; (4) steps to address achievement gaps for limited English-proficient, special education and low-income students; and (5) alternative English language learning programs for limited English proficient students, notwithstanding chapter 71A; and (6) a financial plan for the school, including any additional funds to be provided by the district, commonwealth, federal government or other sources.

The secretaries of health and human services, labor and workforce development, public safety and other applicable state and local social service, health and child welfare officials shall coordinate with the superintendent regarding the implementation of strategies under clauses (1) to (3), inclusive, of the second paragraph that are included in a final priority plan and shall, subject to appropriation, reasonably support such implementation consistent with the requirements of state and federal law applicable to the relevant programs that each such official is responsible for administering. The secretary of education and the commissioner of elementary and secondary education shall assist the superintendent in facilitating the coordination.

To assess the school across multiple measures of school performance and student success, the priority plan shall include measurable annual goals including, but not limited to: (1) student attendance, dismissal rates and exclusion rates; (2) student safety and discipline; (3) student promotion and graduation and dropout rates; (4) student achievement on the Massachusetts Comprehensive Assessment System; (5) progress in areas of academic underperformance; (6) progress among subgroups of students, including low-income students as defined by chapter 70, limited English-proficient students and students receiving special education; (7) reduction of achievement gaps among different groups of students; (8) student acquisition and mastery of twenty-first century skills; (9) development of college readiness, including at the elementary and middle school levels; (10) parent and family engagement; (11) building a culture of academic success among students; (12) building a culture of student support and success among school faculty and staff and; (13) developmentally appropriate child assessments from pre-kindergarten through third grade, if applicable.

(d) Notwithstanding any general or special law to the contrary, in creating the priority plan required in subsection (b), the superintendent may: (1) expand, alter or replace the curriculum and program offerings of the school, including the implementation of research-based early literacy programs, early interventions for struggling readers and the teaching of advanced

placement courses or other rigorous nationally or internationally recognized courses, if the school does not already have such programs or courses; (2) reallocate the uses of the existing budget of the school; (3) provide additional funds to the school from the budget of the district, if the school does not already receive funding from the district at least equal to the average per pupil funding received for students of the same classification and grade level in the district; (4) provide funds, subject to appropriation and following consultation with applicable local unions, to increase the salary of any administrator, or teacher in the school, to attract or retain highly-qualified administrators, or teachers or to reward administrators, or teachers who work in underperforming schools that achieve the annual goals set forth in the priority plan; (5) expand the school day or school year or both of the school; (6) for an elementary school, add pre-kindergarten and full-day kindergarten classes, if the school does not already have such classes; (7) following consultation with applicable local unions, require the principal and all administrators, teachers and staff to reapply for their positions in the school, with full discretion vested in the superintendent regarding his consideration of and decisions on rehiring the principal and with full discretion vested in the principal regarding his consideration of and decisions on rehiring administrators, teachers and staff based on the reapplications; (8) limit, suspend or change 1 or more provisions of any contract or collective bargaining agreement, as the contract or agreement applies to the school; provided, that the superintendent shall not reduce the compensation of an administrator, teacher or staff member unless the hours of the person are proportionately reduced; (9) limit, suspend or change 1 or more school district policies or practices, as such policies or practices relate to the school; (10) include a provision of job-embedded professional development for teachers at the school, with an emphasis on strategies that involve teacher input and feedback; (11) provide increased opportunities for teacher planning time and collaboration focused on improving student instruction; (12) establish a plan for professional development for administrators at the school, with an emphasis on strategies that develop leadership skills and use the principles of distributive leadership; (13) establish steps to assure a continuum of high-expertise teachers by aligning the following processes with a common core of professional knowledge and skill: hiring, induction, teacher evaluation, professional development, teacher advancement, school culture and organizational structure; (14) develop a strategy to search for and study best practices in areas of demonstrated deficiency in the school; (15) establish strategies to address mobility and transiency among the student population of the school; and (16) include additional components based on addressing the reasons the school was designated as underperforming and the recommendations of the group of stakeholders in subsection (b).

If the superintendent does not approve a reapplication submitted by an employee pursuant to clause (7) for a position in the school or if an employee does not submit a reapplication for a position in the school, the employee shall retain such rights as may be provided under law or any applicable collective bargaining agreement in relation to the employee's ability to fill another position in the district; provided, however, that the employee shall not have the right to displace any teacher with professional teacher status in any other school during a school year.

A teacher with professional teacher status in a school declared priority may be dismissed for good cause; provided, however, that the teacher receives 5 days written notice of the decision to terminate which shall include, without limitation, an explanation of the reason why the superintendent is not retaining the teacher in the school; provided, further, that the teacher may seek review of a termination decision within 5 days after receiving notice of the teacher's termination by filing a petition for expedited arbitration with the commissioner; provided, further, that except as otherwise provided herein section 42 of chapter 71 shall apply to a petition filed pursuant to this section; provided, further, that the commissioner shall cause an arbitrator to be selected pursuant to the procedures in section 42 of chapter 71 within 3 days of receipt of petition and shall conduct and complete a hearing within 10 days of receipt of the petition; provided, further, that in reviewing dismissal decisions, the arbitrator shall consider the components of the priority plan and shall also consider any personnel evaluations conducted that are consistent with the guidelines established pursuant to section 1B; and provided, further, that the arbitrator's decision shall be issued within 10 days from the completion of the hearing. For a school with limited English-proficient students, the professional development and planning time for teachers and administrators identified in clauses (10) to (12), inclusive, shall include specific strategies and content designed to maximize the rapid academic achievement of limited English-proficient students at the school.

(e) Within 30 days of the local stakeholder group making recommendations under subsection (b), the superintendent shall submit a priority plan to the local stakeholder group, the school committee and the commissioner, all of whom may propose modifications to the plan. The superintendent shall make such plan immediately available to the public upon the submission. The stakeholder group, the school committee and the commissioner shall submit any proposed modifications to the superintendent not more than 30 days after the date of submission of the priority plan and the proposed modifications shall be made public immediately upon their submission to the superintendent. The superintendent shall consider and may incorporate the modifications into the plan if the superintendent determines that inclusion of the modifications would further promote the rapid academic achievement of students at the school or may alter or reject the proposed modifications submitted under this subsection. Within 30 days of receiving

any proposed modifications under this subsection, the superintendent shall issue a final priority plan for the school and the plan shall be made publicly available.

(f) Within 30 days of the issuance of a final priority plan under subsection (e) a school committee or local union may appeal to the commissioner regarding 1 or more components of the plan, including the absence of 1 or more modifications proposed under subsection (e). The commissioner may, in consultation with the superintendent, modify the plan if the commissioner determines that: (1) such modifications would further promote the rapid academic achievement of students in the applicable school; (2) a component of the plan was included, or a modification was excluded, on the basis of demonstrably-false information or evidence; or (3) the superintendent failed to meet the requirements of subsections (b) to (e), inclusive. The decision of the commissioner regarding an appeal under this subsection shall be made within 30 days and shall be final.

(g) If, after considering the recommendations of the group of stakeholders, the superintendent considers it necessary to maximize the rapid academic achievement of students at the applicable school by altering the compensation, hours and working conditions of the administrators, teachers, principal and staff at the school or by altering other provisions of a contract or collective bargaining agreement applicable to the administrators, teachers, principal and staff, the superintendent may request that the school committee and any union bargain or reopen the bargaining of the relevant collective bargaining agreement to facilitate such achievement. The bargaining shall be conducted in good faith and completed not later than 30 days from the point at which the superintendent requested that the parties bargain. The agreement shall be subject to ratification within 10 business days by the bargaining unit members in the school. If the parties are unable to reach an agreement within 30 days or if the agreement is not ratified within 10 business days by the bargaining unit members of the school, the parties shall submit remaining unresolved issues to a joint resolution committee as established in subsection (f) of section 3 for dispute resolution process on the next business day following the end of the 30-day bargaining period or failure to ratify.

(h) The superintendent may select an external receiver to operate the school and implement the priority plan or to assist the superintendent with the implementation.

(j) Each priority plan shall be authorized for a period of not more than 3 years, subject to subsection (k). The superintendent or external receiver, as applicable, may develop additional components of the priority plan pursuant to subsections (b) to (g) inclusive and shall develop

annual goals for each component of the plan, in a manner consistent with subsections (b) to (g), inclusive. The superintendent shall be responsible for meeting the goals of the plan.

(k) Each school designated by the commissioner as priority under subsection (a) shall be reviewed by the superintendent, in consultation with the principal of the school. The purpose of the review shall be to determine whether the school has met the annual goals in its priority plan and to assess the overall implementation of the priority plan. The review shall be in writing and shall be submitted to the commissioner and the relevant school committee. The review shall be submitted in a format determined by the department of elementary and secondary education. If the commissioner determines that the school has met the annual performance goals stated in the priority plan, the review shall be considered sufficient and the implementation of the priority plan shall continue. If the commissioner determines that the school has not met 1 or more goals in the priority plan and that the failure to meet the goals may be corrected through reasonable modification of the plan, the superintendent may amend the priority plan in a manner consistent with the provisions of subsection (b) to (g) inclusive. If the commissioner determines that the school has substantially failed to meet 1 or more goals in the plan, the commissioner may appoint an examiner to conduct an evaluation of the school's implementation of the priority plan. If the commissioner determines that the school has substantially failed to meet multiple goals in the plan, the commissioner may require changes to the priority plan to be implemented by the superintendent in the following year or the appointment of an external partner to advise and assist the superintendent in implementing the plan the following year. If the changes to the priority plan require changes in a collective bargaining agreement applicable to administrators, teachers or staff in the school, the bargaining procedure in subsection (g) shall be used. If an underperforming school is operated by an external receiver, the commissioner may require the superintendent to terminate the receiver and develop a new priority plan; provided, however, that the superintendent shall not terminate the receiver before the completion of the first full school year of the operation of the underperforming school.

(l) Upon the expiration of a priority plan, the commissioner shall conduct a review of the school to determine whether the school has improved sufficiently, requires further improvement or has failed to improve. On the basis of such review, the commissioner may determine that: (1) the school has improved sufficiently for the designation of the school as underperforming to be removed; (2) the school has improved, but the school remains underperforming, in which case the superintendent may, with the approval of the commissioner, renew the plan or create a new or modified plan for an additional period of not more than 3 years, consistent with the requirements of subsections (a) to (g); or (3) the school has improved and the conditions created

under this section are critical to the school's improvement and shall remain in place, or (4) consistent with the requirements of subsection (a), the school is chronically underperforming.”

SECTION 3. Section 89 of chapter 71 of the General Laws, as so appearing, is hereby amended by striking out, in lines 152 through 160, inclusive, the following:- “provided, however, notwithstanding subsection (c) the 14 new Horace Mann charter schools 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 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;” and inserting in place thereof the following:- “provided, however, notwithstanding subsection (c) the new Horace Mann charter schools 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 new Horace Mann charter schools 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;”

SECTION 4. Subsection (i) of said section 89 of chapter 71, as so appearing, is hereby further amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

“Not more than 120 charter schools shall be allowed to operate in the commonwealth at any time, excluding those commonwealth charter schools that are located in school districts qualifying under paragraph (3) for tuition payments to commonwealth charter schools in excess of 9 per cent of the district's net school spending; provided, however, that of the 120 charter schools, not more than 48 shall be Horace Mann charter schools; provided, however, notwithstanding subsection (c) the new Horace Mann charter schools 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 new Horace Mann charter schools 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; and not more than 72 shall be commonwealth charter schools, excluding those commonwealth charter schools that are located in school districts qualifying under paragraph (3) for tuition payments to commonwealth charter schools in excess of 9 per cent of the district's net school spending. The board shall not

approve a new commonwealth charter school in any community with a population of less than 30,000 as determined by the most recent United States Census estimate, unless it is a regional charter school.”

SECTION 5. Said section 89 of chapter 71, as so appearing, is hereby further amended by striking out, in line 207, the following:- “but shall not exceed 18 percent”.

SECTION 6. Said section 89 of chapter 71, as so appearing, is hereby further amended by adding after the word “year.”, in line 173, the following new sentence:-

“Upon recommendation by the commissioner and the receiver, the board shall review applications to establish a charter school any district that has been designated by the board as chronically underperforming pursuant to Section 1K of chapter 69 as such applications are received, and grant new charters as approved by the board.”

SECTION 7. Said section 89 of chapter 71, as so appearing, is hereby further amended by striking out, in line 580, the following words:- “and local collective bargaining unit”.

SECTION 8. Paragraph (2) of subsection (i) of said section 89 of chapter 71 is hereby further amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

“In any fiscal year, no public school district’s total charter school tuition payment to commonwealth charter schools shall exceed 9 per cent of the district’s net school spending, except for those school districts qualifying under paragraph (3) where such tuition payments in excess of 9 per cent of the district’s net school spending have been previously authorized by the board. The commonwealth shall incur charter school tuition payments for siblings attending commonwealth charter schools to the extent that their attendance would otherwise cause the school district's charter school tuition payments to exceed 9 per cent of the school district's net school spending, excluding those districts that qualify under said paragraph (3).”

SECTION 9. Paragraph (2) of subsection (i) of said section 89 of chapter 71 is hereby further amended by striking out the following paragraph:-

“Not less than 2 of the new commonwealth charters approved by the board in any year shall be granted for charter schools located in districts where overall student performance on the statewide assessment system approved by the board under section 1I of chapter 69 is in the lowest 10 per cent statewide in the 2 years preceding the charter application.”

SECTION 10: Paragraph (3) of said subsection (i) of section 89 of chapter 71, as so appearing, is hereby amended by striking out the first paragraph and inserting in place thereof the following paragraph:-

“In any fiscal year, if the board determines based on student performance data collected pursuant to section 11, said district is in the lowest 10 percent of all statewide composite performance index scores, as defined in regulation, released in the 2 consecutive school years before the date the charter application is submitted, the board may approve commonwealth charter school amendments and applications that have the effect of increasing the school district’s total charter school tuition payment to commonwealth charter schools above 9 per cent of the district’s net school spending. For a district qualifying under this paragraph whose charter school tuition payments exceed 9 per cent of the school district’s net school spending, the board shall provide expedited consideration of an application for the establishment or expansion of a commonwealth charter school, without regard to the standard annual process for other such applications as established in paragraph (1), if an applicant, or a provider with which an applicant proposes to contract, has a record of operating at least 1 school or similar program that demonstrates academic success and organizational viability and serves populations similar to those the proposed school seeks to serve from the following categories of students, those: (i) eligible for free lunch; (ii) eligible for reduced price lunch; (iii) that require special education; (iv) limited English-proficient of similar language proficiency level as measured by the Massachusetts English Proficiency Assessment examination; (v) sub-proficient, which shall mean students who have scored in the “needs improvement”, “warning” or “failing” categories on the mathematics or English language arts exams of the Massachusetts Comprehensive Assessment System for 2 of the past 3 years or as defined by the department using a similar measurement; (vi) who are designated as at risk of dropping out of school based on predictors determined by the department; (vii) who have dropped out of school; or (viii) other at-risk students who should be targeted to eliminate achievement gaps among different groups of students. Applications from qualified providers under this section may be approved even if such providers do not currently serve the identical grade levels for which they are seeking a new charter or amendment or do not serve the identical student population that will likely enroll in the new or expanded school. For a district approaching its net school spending cap, the board shall give preference to applications from providers operating schools in more than 1 municipality.”

SECTION 11. Subsection (n) of said section 89 of chapter 71, as so appearing, is hereby amended by inserting after the second paragraph the following paragraphs:-

“Subject to approval by the commissioner, school districts or municipalities that rent classroom space to commonwealth charter schools under lease agreements with terms of at least ten years may require such schools to institute reasonable lottery preferences for elementary school students who live within 1 mile of such school buildings, middle school students who live within 1.5 miles of such school buildings, or high school students who live within 2 miles of such school buildings, or any student who lives within the district’s established student assignment zone in which such school buildings are located as a condition of such lease agreements. Such preferences may include preferences for students who qualify for the federal free and reduced lunch program, have a disability as defined in chapter 71B section 1, or come from households where a language other than English is spoken.

Subject to approval by the Commissioner, commonwealth charter schools may voluntarily adopt reasonable lottery preferences for elementary students who live within 1 mile of the school, middle school students who live within 1.5 miles of such school buildings, or high school students who live within 2 miles of the school, or any student who lives within the district’s established student assignment zone in which the school is located. Such preferences may include preferences for students who qualify for the federal free and reduced lunch program, have a disability as defined in chapter 71B section 1, or come from households where a language other than English is spoken. Under no circumstances may such preferences serve to limit the number of students in these categories who are enrolled in a commonwealth charter school.

Subject to approval by the Commissioner, charter schools located within the same municipality may voluntarily establish a common lottery, which may provide student applicants with a single offer for admission.”

SECTION 12. Subsection (b) of section 15 of chapter 70B of the General Laws, as so appearing, is hereby amended by striking out the second paragraph and inserting in place thereof the following paragraph:-

“Before the sale or lease of an assisted structure or facility or a portion of that structure or facility, the school district in control of the structure or facility shall submit to the authority a district-wide school facility use plan that shall include, but not be limited to, a listing of all school facilities under the control of the school district, a detailed description of both the current use and proposed use of each school facility, the most recent enrollment data, by school facility, then available to the school district, a detailed floor plan of each school facility that shows and labels each space in the facility and whether it is used as a classroom or has some other use and any other information that may be required by the authority to understand the district’s school

facility use plan. If the plan includes the closure, sale or lease of a school facility or any part of a school facility, the authority may conduct, with the full cooperation of the district, an analysis of district-wide enrollment capacity and future enrollment trends for the district. Such an analysis may also be requested by one or more commonwealth charter schools established pursuant to section 89 of said chapter 71, where there is reasonable evidence of excess capacity sufficient to meet the facilities needs of such charter schools. If the capacity analysis and enrollment projection indicate an extended period of significant excess capacity within the district's educational facilities, the district shall, prior to consideration of any other disposition of the identified excess capacity, make a good faith offer to sell or lease in whole or in part at fair market value the identified excess capacity to one or more commonwealth charter schools established pursuant to section 89 of chapter 71 or applicants for a commonwealth charter school pursuant to said section 89 of said chapter 71 that serve or are seeking to serve students who live in the school district. In the event that there is not enough excess capacity to meet the space needs of all the eligible commonwealth charter schools that seek to lease or buy such excess capacity, priority shall be given to those charter schools with the most success as measured by the criteria identified in section 11 of chapter 69. Notwithstanding any other provision of this section, the total rent for excess capacity leased to a commonwealth charter school for a school year shall not exceed the total per pupil capital needs component received by a commonwealth charter school for that school year pursuant to subsection ff of section 89 of chapter 71. The authority shall establish guidelines for school districts and municipalities that lease or sell property to charter schools under this section, in order to ensure the process is open, fair and in compliance with general laws and regulations governing the disposition of public property. The authority shall not recapture commonwealth and authority assistance for any such excess capacity that is sold or leased to a commonwealth charter school or applicant for a commonwealth charter school."

SECTION 13: Subsection (d) of said section 15 of chapter 70B, as so appearing, is hereby amended by striking out the first sentence and inserting in place thereof the following sentence:-

"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 lease of such assisted structures or facilities for nonprofit public purposes."