

CHAPTER 379 AN ACT ESTABLISHING COMMONWEALTH VIRTUAL SCHOOLS.

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Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith innovation into schools and districts, 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 1G of chapter 15 of the General Laws, as appearing in the 2010 Official Edition, is hereby amended by striking out, in line 6, the words “technology education” and inserting in place thereof the following words:- “digital learning”.

SECTION 2. Said section 1G of said chapter 15, as so appearing, is hereby further amended by striking out the sixth paragraph.

SECTION 3. Subsection (e) of section 92 of chapter 71 of the General Laws, as so appearing, is hereby amended by striking out clauses (iii) and (iv) and inserting in place thereof the following clause:- or (iii) the simultaneous establishment of 2 or more Innovation Schools as an Innovation Schools Zone within a school district.

SECTION 4. Said section 92 of said chapter 71, as most recently amended by section 74 of chapter 68 of the acts of 2011, is hereby further amended by striking out subsection (q).

SECTION 5. Said chapter 71 is hereby further amended by adding the following section:-

Section 94. (a) As used in this section the following words shall, unless the context clearly requires otherwise, have the following meanings:-

“Board”, the board of elementary and secondary education.

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

“Commonwealth virtual school”, a public school operated by a board of trustees whose teachers primarily teach from a remote location using the internet or other computer-based methods and whose students are not required to be located at the physical premises of the school.

“Certificate”, a certificate of organization issued by the board to a commonwealth virtual school’s board of trustees which governs the operations of the commonwealth virtual school.

“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.

“Education collaborative”, an association of 2 or more school committees or boards of trustees of charter schools established pursuant to section 4E of chapter 40.

(b) On or before October 1, the board shall issue a request for proposals to establish 1 or more commonwealth virtual schools; provided, however, that the board shall not be required to issue a request for proposals for any school year for which a certificate is not available to be awarded. The request for proposals shall be published on the department's website. Persons or entities eligible to submit a proposal to establish a commonwealth virtual school shall include, but not be limited to: (i) a school district; (ii) 2 or more school districts; (iii) an education collaborative; (iv) an institution of higher education; (v) a non-profit entity; (vi) 2 or more certified teachers; or (vii) parents. Private and parochial schools and for-profit entities shall not be eligible to submit a proposal. A proposal shall be selected from the responses to the request for proposals and an applicant awarded a certificate under the procedures adopted by the board.

The request for proposals shall include, but not be limited to, the following terms and conditions that shall be addressed in each response to the request for proposals and, upon selection by the board, shall be incorporated into the certificate to operate a commonwealth virtual school:

- (1) the mission, purpose and specialized focus, if any, of the proposed commonwealth virtual school;
- (2) the educational program, instructional methodology and services to be offered to students;
- (3) the organization of the school by ages of students or grades to be taught and an estimate of the total enrollment of the commonwealth virtual school;
- (4) the method for and timetable of admission to the commonwealth virtual school;
- (5) the commonwealth virtual school governance and by-laws;
- (6) the proposed school year;
- (7) how the commonwealth virtual school shall administer state required assessment tests;
- (8) a statement of equal educational opportunity which shall state that the commonwealth virtual school shall be open to all students, on a space available basis, and shall not discriminate on the basis of race, color, national origin, religion, sex, gender identity or sexual orientation;
- (9) a description of any preferences the school shall give for enrollment and how the school shall conduct a lottery for admission if applications exceed enrollment capacity;
- (10) the identity of any third party software or curriculum vendors that the school intends to use;
- (11) a proposed arrangement or contract with an organization that shall manage or operate the school, including any proposed or agreed upon payments to such organization;
- (12) a demonstration of the applicant's capacity to support and store all critical student, program and staff data for expedient retrieval and analysis in compliance with federal and state laws;
- (13) provisions for cyber safety;
- (14) how the school shall notify each school district in writing of the number and grade levels of students who shall be attending the commonwealth virtual school from that district within 10 days of the student registering for enrollment in the commonwealth virtual school;
- (15) whether the commonwealth virtual school will offer online courses to students attending other schools;
- (16) the financial plan for the operation of the school;
- (17) the number and qualifications of teachers and administrators to be employed;
- (18) the procedures for evaluation and professional development for teachers and administrators, including what training, if any, shall be provided to teachers who have not previously taught online;
- (19) the school's capacity to address the particular needs of English language learners to learn English and learn content matter;

- (20) the school's plan to conduct outreach to prospective students;
- (21) what supports shall be provided to students to help them complete courses, including the school's strategies for ensuring that an enrolled student shall complete the program and goals regarding course completion and student achievement;
- (22) how the school will monitor student progress in order to identify areas of difficulty and assist students who need additional attention;
- (23) where relevant, what supports will be provided to help students prepare for college and careers;
- (24) the school's capacity to support students' social and emotional growth;
- (25) how the school shall create a community for students who are enrolled in the commonwealth virtual school;
- (26) how the commonwealth virtual school applicant shall include activities to engage students;
- (27) what, if any, in person activities, learning or interaction will be provided or offered, including extra-curricular activities;
- (28) expectations for age appropriate supervision of students under the age of 14, if applicable;
- (29) a description of where students will access the school's courses, including whether it is in the home or in a location provided and overseen by the commonwealth virtual school applicant;
- (30) methods to assure that all students shall have access to necessary technology and materials;
- (31) what technical support shall be available to students, including whether the commonwealth virtual school applicant shall offer an orientation for taking an online course before starting the coursework;
- (32) how the school shall define and monitor student attendance, including how it shall verify that each student is participating in classes, how truancy shall be addressed and goals regarding student attendance;
- (33) expectations and goals for communication between teachers and students and how such interaction shall be documented;
- (34) how the school shall involve parents and guardians as partners in the education of the children and goals for parental and family engagement;
- (35) the school's capacity to implement the proposal and provide high quality instructional services;
- (36) the school's capacity to instruct students in the following categories, if the school intends to serve any such students: (i) students with physical or other challenges that make it difficult for them to physically attend a school; (ii) students with medical needs requiring a home or hospital setting; (iii) students with unusual needs requiring a flexible schedule; (iv) students who are over-age for their grade; (v) students who have been expelled; (vi) students who have dropped out or are at risk of dropping out; (vii) students who are pregnant or have a child; (viii) students with social and emotional challenges that make it difficult for them to physically attend a school; (ix) students who feel bullied or cannot attend school because their safety is at risk; (x) gifted and talented students; (xi) students who seek academic work not available in their school; (xii) students in rural communities; and (xiii) students in institutionalized settings;
- (37) whether the school proposes a mechanism to provide meals to students eligible for free and reduced price lunch;
- (38) the student to teacher ratio; and
- (39) whether the school will establish a personalized learning plan for each student, in conjunction with the student's school district of residence.

(c) The board shall make the final determination on selecting proposals; provided, however, that the board shall only grant a certificate to a qualified applicant as determined by the board; provided further, that the board shall hold a public hearing on the proposals which shall be attended by at least 1 member of the board. Not more than 10 commonwealth virtual schools shall be allowed to operate in the commonwealth at any time; provided, however, that a commonwealth virtual school operated by a single school district, under an agreement entered into by more than 1 school district or by an education collaborative shall not be counted towards this limit if the commonwealth virtual school only enrolls students who reside in the school district, in the school districts that signed the agreement or in the school districts that are members of an education collaborative. The board may authorize a single board of trustees to manage more than 1 commonwealth virtual school; provided, however, that each school is issued its own certificate. Under no circumstances shall the total number of full-time students attending commonwealth virtual schools exceed 2 per cent of the total number of students attending public schools in the commonwealth. In the case of a commonwealth virtual school that is established by a school district, not less than 5 per cent of the students enrolled in the commonwealth virtual school shall be from the school district that established the school. In the case of a commonwealth virtual school that is established by more than 1 school district or by an education collaborative, not less than 5 per cent of the students enrolled in the school shall be from the combined enrollment of the districts that established the school or the districts that are members of the education collaborative.

The board shall give preference to proposals that include an educational program or specialized focus that appropriately addresses 1 or more of the following: students with physical or other challenges that make it difficult for them to physically attend a school; students with medical needs requiring a home or hospital setting; students with unusual needs requiring a flexible schedule; students who are over-age for their grade; students who have been expelled; students who have dropped out; students at risk of dropping out; students who are pregnant or have a child; students with social and emotional challenges that make it difficult for them to physically attend a school; students who feel bullied or cannot attend school because the students' safety is at risk; gifted and talented students; students who seek academic work not available in their school; students in rural communities; and students in institutionalized settings. The board shall also consider whether proposed schools will create or enhance the opportunity for students to attend virtual schools in all grades from kindergarten through grade 12.

(d) A commonwealth virtual school shall operate under a certificate issued by the board and be governed by a board of trustees. If a district or education collaborative operates the commonwealth virtual school, then the board of trustees shall be appointed by the member school committees of the district or the collaborative board. The board of trustees of a commonwealth virtual school, upon being granted a certificate, shall be deemed to be a public agent authorized by the commonwealth to supervise and control the commonwealth virtual school. A commonwealth virtual school shall be deemed to be a state agency under chapter 268A and members of the board of trustees shall be deemed to be public employees under chapter 268B.

(e) The board of trustees of a commonwealth virtual school shall have all powers necessary or desirable for carrying out its virtual program, including, but not limited to, the power to:

- (1) adopt a name and corporate seal; provided, that any name selected shall include the words “commonwealth virtual school”;
- (2) acquire real property, from public or private sources, by lease, lease with an option to purchase or by gift, for use as a school facility;
- (3) receive and disburse funds for school purposes;
- (4) incur temporary debt in anticipation of receipt of funds; provided that, notwithstanding any general or special law to the contrary, the terms of repayment of any commonwealth virtual school's debt shall not exceed the duration of the school's certificate without the approval of the board;
- (5) solicit and accept grants or gifts for school purposes; and
- (6) determine the school's curriculum and develop the school's annual budget.

(f) A commonwealth virtual school may provide access to its courses in an existing public school building or any other suitable location; provided, however, that a commonwealth virtual school shall comply with all applicable state and federal health and safety laws and regulations.

(g) The board may waive requirements that students who attend a commonwealth virtual school, attend school for a minimum number of hours or days each school year and may permit students to earn credits by demonstrating competency in a grade or subject matter. Students in commonwealth virtual schools shall be required to meet the same academic standards, testing and portfolio requirements set by the board for students in other public schools.

To ensure that students are learning and demonstrating their knowledge, each commonwealth virtual school shall ensure that students are provided, in each credit-bearing course, multiple synchronous learning opportunities with their teachers in which students are required to participate and share their knowledge.

(h) Commonwealth virtual schools shall comply with chapter 71B; provided, however, that the fiscal responsibility for a student with a disability enrolled in or determined to require a private day or residential school shall remain with the school district where the student resides. If a commonwealth virtual school expects that a student with a disability enrolled in the commonwealth virtual school may be in need of the services of a private day or residential school, it shall convene an individualized education program team meeting for the student. Notice of the team meeting shall be provided to the special education department of the school district in which the child resides at least 5 days in advance. Personnel from the school district in which the child resides shall participate in the team meeting concerning future placement of and services for the child and shall agree on the needed services for the child.

(i) No teacher shall be hired by a commonwealth virtual school who is not certified pursuant to section 38G. Nothing herein shall preclude such teacher from using digital content which may include, but not be limited to, guest lecturers.

(j) A certificate to operate a commonwealth virtual school granted by the board shall be for not less than 3 years and not more than 5 years, as determined by the board. The board shall develop procedures and guidelines for amending, revoking and renewing a virtual school's certificate. When deciding on certificate renewal, the board shall consider progress made in student

academic achievement and whether the school has met its obligations and commitments under the certificate.

(k) The amount of tuition per pupil a school district shall pay for a student residing in the district who is enrolled in a commonwealth virtual school shall be the school choice tuition amount, which shall be paid through the school choice mechanism; provided, that the department may, in consultation with the operational services division, approve alternative tuition amounts proposed by applicants that shall not exceed the state average per pupil foundation budget for students of the same classification and grade level; provided, further, that the department may authorize additional tuition assessments for services required by an individualized education program established pursuant to chapter 71B. If a commonwealth virtual school offers online courses to students attending other schools, the commonwealth virtual school shall work with the student's district or school to determine whether the online courses meet said district's or school's standards and requirements and what the commonwealth virtual school will charge the student's district or school for such online courses.

The department may retain not more than \$75 per pupil for the administration of the commonwealth virtual school program.

The department, in consultation with the department of youth services, shall determine the appropriate tuition responsibility for students who are in the custody of the department of corrections, a sheriff or the department of youth services.

Students enrolled in a commonwealth virtual school shall be counted in the foundation enrollment of the school district where the student resides.

(l) The department shall promulgate rules and regulations creating a reporting requirement for a commonwealth virtual school's net asset balance at the end of each fiscal year; provided, however, that the report shall include, but not be limited to: (1) the revenue and expenditures for the prior fiscal year with a specific accounting of the uses of public and private dollars; (2) compensation and benefits for teachers, staff, administrators, executives and members of the board of trustees; (3) the amount of funds paid to a management company; (4) the sources of surplus funds, specifically whether the funds are private or public; (5) how surplus funds were used in the previous fiscal year; and (6) the planned use of surplus funds in the upcoming fiscal year and in future fiscal years. The board may establish limits for excess funds that may be retained by commonwealth virtual schools and may require commonwealth virtual schools to return excess funds to school districts.

(m) Each commonwealth virtual school shall submit an annual report, on or before January 1, to the board. The school shall make its report available to the public on its website. The annual report shall be in such form as may be prescribed by the board and shall include, but not be limited to: (1) a discussion of progress made toward the achievement of the goals set forth in the certificate; (2) a list of the programs and courses offered; (3) a description and number of the students enrolled in the commonwealth virtual school by grade level, the number of students eligible for free and reduced price lunch and the number of students who applied and were not admitted; (4) a financial statement describing by appropriate categories the revenue and

expenditures for the prior fiscal year and a balance sheet describing the commonwealth virtual school's assets, liabilities and fund balances or equities; (5) information regarding and a discussion of student attendance and participation; (6) information regarding and a discussion of student-teacher interaction; (7) information regarding and a discussion of student performance in the commonwealth virtual school, including data from state assessments and a comparison of students' achievement against the achievement of the students in the sending district; (8) a discussion of how many courses were completed and not completed; (9) a discussion of how the school created a community for students; (10) what activities were included to engage students and how students participated in those activities; (11) a discussion of parental involvement; and (12) a discussion of the school's outreach and recruitment efforts; provided, however, that said report shall include input from teachers and administrators at the virtual school and input from administrators in a district that has established a virtual school or districts that are members of an education collaborative that has established a virtual school.

(n) Each commonwealth virtual school shall maintain an accurate account of all its activities and all its receipts and expenditures and shall annually conduct an independent audit of its accounts. Such audit shall be filed annually, on or before January 1 with the department and the state auditor and shall be in a form prescribed by the state auditor. The state auditor may investigate the budget and finances of commonwealth virtual schools and their financial dealings, transactions and relationships and shall have the power to examine the records of commonwealth virtual schools and to prescribe methods of accounting and the rendering of periodic reports.

(o) On or before September 1, the commissioner shall furnish a supplemental report on the Massachusetts comprehensive assessment system performance results of students served by each commonwealth virtual school and on the racial, ethnic and socio-economic make-up of the students served by each commonwealth virtual school. The commissioner shall also provide information on the number of students enrolled in each commonwealth virtual school who have individualized education programs pursuant to chapter 71B. The department shall make such report available to the public on the department's website.

(p) On or before September 1, the commissioner shall prepare a report on the implementation and impact of this section, including, but not limited to:

- (1) the fiscal impact on sending districts;
- (2) any necessary adjustments to tuition rates, including whether the amount should vary based on grade or type of school and the appropriate mechanism for funding virtual schools;
- (3) information on course completion and student attendance and participation rates;
- (4) the academic achievement of students attending commonwealth virtual schools;
- (5) the level of supervision or support needed for students in elementary and middle school;
- (6) the support necessary or helpful to ensure that students successfully complete online courses;
- (7) the professional development virtual school teachers require;
- (8) the appropriate enrollment limit for a virtual school, if any, including information about wait lists; and
- (9) the need for any changes to the commonwealth virtual school program.

The report shall be based partially on information in each commonwealth virtual school's annual report and financial audits. This report shall include input from virtual school teachers and administrators. The commissioner shall consult with the digital learning advisory council to prepare this report. The commissioner shall file the report with the clerks of the house and senate, who shall forward the report to the joint committee on education. The department shall make the report available to the public on the department's website.

(q) The commissioner shall identify and offer information on online courses which are aligned with state academic standards that districts may use and shall publish that list on the department's website. At least 1 of the online courses listed shall be available at no cost to school districts, provided that such no cost online course is aligned with state academic standards. The list shall be reviewed and updated annually. Nothing in this subsection shall preclude school districts from using other courses not identified by the commissioner.

(r) The board may promulgate regulations for implementation and enforcement of this section, provided that the regulations may include, but shall not be limited to, a provision indicating the appropriate percentage of online academic instruction provided for a school to be considered a commonwealth virtual school pursuant to this section. Upon release of the proposed regulations, the board shall file a copy of the regulations 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 file a copy of the regulations with the chairpersons of the joint committee on education and, not earlier than 30 days after the filing, the board shall file the final regulations with the state secretary.

(s) Nothing in this section shall preclude a student from taking some or all of the student's classes online when such classes are offered or approved by the school the student attends or by an education collaborative in which the student's school district participates.

This section shall not apply to a virtual school operated by a single school district if the school enrolls only students residing in the school district; provided, however, that such district shall submit a summary description of the proposed virtual school to the commissioner for review and comment at least 4 months in advance of the opening of the virtual school. The commissioner shall then provide written comments on the proposal to each district's school committee.

(t) A school committee may, by vote, restrict enrollment of its students in commonwealth virtual schools if the total enrollment of its students in commonwealth virtual schools exceeds 1 per cent of the total enrollment in its district; provided, however, that no student enrolled in a commonwealth virtual school shall be compelled to withdraw as a result of that vote.

SECTION 6. The board of elementary and secondary education shall grant a commonwealth virtual school certificate of organization to the Greenfield public schools for the operation of the Massachusetts Virtual Academy if the Greenfield public schools submits the information listed in subsection (b) of section 94 of chapter 71 of the General Laws in response to the first request

for proposals issued pursuant to this act. Said certificate shall be for not less than 3 years and not more than 5 years and shall be for a school that serves students in kindergarten through grade 12. Notwithstanding subsection (c) of section 94 of chapter 71 of the General Laws, for the period of the initial certificate not less than 2 per cent of the students enrolled in the Massachusetts Virtual Academy shall be from the Greenfield school district.

SECTION 7. The board of elementary and secondary education shall establish a digital learning advisory council to advise the commissioner of elementary and secondary education regarding virtual schools, supplemental online courses, education technology and other matters related to virtual education, including, but not limited to, recommendations for best practices to encourage online education to complement classroom instruction in district schools and recommendations on the appropriateness of the fee that the department may retain for the administration of the virtual school program. The members of the council shall serve without compensation but may be reimbursed, subject to appropriation, for expenses necessarily and reasonably incurred in the performance of the member's responsibilities. The council shall consist of 15 members who shall be recommended by the commissioner of elementary and secondary education and appointed by the board of elementary and secondary education and who shall not, by virtue of their membership, be deemed state employees under chapter 268A of the General Laws. One member shall be a representative of the American Federation of Teachers Massachusetts, 1 member shall be a representative of the Massachusetts Teachers Association, 1 member shall be a representative of the Massachusetts Association of School Superintendents, 1 member shall be a representative of the Massachusetts Association of School Committees, 1 member shall be a representative of a non-profit organization that conducts research and training related to online education, 1 member shall be a representative of an institution of higher education that provides online education for students in any grades from kindergarten to grade 12, inclusive, 1 member shall be a parent of a student who attends a commonwealth virtual school full-time, 1 member shall be a representative of the Massachusetts secondary school administrators and 1 member shall be a representative of the VHS Collaborative. Members shall be appointed for a term of 3 years. No member shall serve for more than 2 consecutive terms. The members serving on the council may be school committee members, school superintendents, professional educators, parents, students or individuals with expertise in virtual education. A reasonable balance of members representing business, labor, civic, educational, parental and professional groups shall be maintained. Members serving on the council shall represent a reasonable statewide geographic balance. The council shall meet not less than twice each year. The commissioner, with the approval of the board, shall appoint the chair of the council. The commissioner or a designee shall serve as the secretary to the council.

SECTION 8. The board of elementary and secondary education shall select not more than 3 commonwealth virtual schools for the 2013-2016 school years, not more than 3 additional commonwealth virtual schools for the 2016-2019 school years and not more than 4 additional commonwealth virtual schools for the 2019-2020 school year; provided, however, that only school districts and education collaboratives shall be eligible to apply for certificates of organization to operate through the 2013-2019 school years; provided, further, that a commonwealth virtual school operated by a single school district, under an agreement entered into by more than 1 school district or by an education collaborative shall not be counted towards the limits in this section if the commonwealth virtual school only enrolls students who reside in

the school district, in the school districts that signed the agreement or in the school districts that are members of the education collaborative.

SECTION 9. The commissioner of elementary and secondary education shall publish a list of online courses which are aligned with state academic standards that school districts may use on the department's website on or before June 30, 2014.

SECTION 10. Section 4 shall take effect on July 1, 2013.

Approved, January 2, 2013.