

HOUSE No. 4274

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, July 16, 2012.

The committee on Ways and Means, to whom was referred the Bill establishing commonwealth virtual schools (House, No. 3873), reports recommending that the same ought to pass with an amendment substituting therefor the accompanying bill (House, No. 4274).

For the committee,

BRIAN S. DEMPSEY.

The Commonwealth of Massachusetts

—————
In the Year Two Thousand Twelve
—————

An Act establishing commonwealth virtual schools.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to provide 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:

1 SECTION 1. Section 1G of chapter 15 of the General Laws, as appearing in the 2010 Official
2 Edition, is hereby amended by striking out, in line 6, the words “technology education” and
3 inserting in place thereof the following words:- “digital learning”.

4 SECTION 2. Said section 1G of said chapter 15, as so appearing, is hereby further amended by
5 striking out, in lines 62 to 65, inclusive, the sentence “The members of the council on technology
6 education shall have demonstrated scholarship or creativity in, or distinguished service to
7 technology education, and shall be broadly represented in all areas of technology education in
8 the comprehensive school.”

9 SECTION 3. Section 92 of chapter 71 of the General Laws, as most recently amended by chapter
10 142 of the acts of 2011, is hereby amended by striking out subsection (e) and inserting in place
11 thereof the following subsection:-

12 (e) Nothing in this section shall be construed to prohibit: (i) the establishment of an Innovation
13 School as an academy within an existing public school; (ii) the establishment of an Innovation
14 School serving students from 2 or more school districts; provided, however, that all of the
15 provisions of this section are met by each school district; or (iii) the simultaneous establishment
16 of 2 or more Innovation Schools as an Innovation Schools Zone within a school district.

17 SECTION 4. Said section 92 of said chapter 71 is hereby further amended by striking out
18 subsection (q).

19 SECTION 5. Chapter 71 of the General Laws is hereby amended by inserting after section 93 the
20 following section:-

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

23 "Board", the board of elementary and secondary education.

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

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

28 "Certificate", a certificate of organization issued by the board to a commonwealth virtual
29 school's board of trustees which governs the operations of the commonwealth virtual school.

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

31 "District", or "school district", the school department of a city, town, regional school district, or

32 county agricultural school.

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

35 (b) On or before October 1 of each year, the board shall issue a request for proposals to establish

36 1 or more commonwealth virtual schools. The request for proposals shall be published on the

37 department’s website. Persons or entities eligible to submit a proposal to establish a

38 commonwealth virtual school shall include, but not be limited to: (i) a school district; (ii) two or

39 more school districts; (iii) an education collaborative; (iv) an institution of higher education; (v)

40 a non-profit entity; (vi) 2 or more certified teachers; or (vii) parents. Private and parochial

41 schools and for-profit entities shall not be eligible to submit a proposal. A board of trustees shall

42 be selected from the responses to the request for proposals and awarded a certificate pursuant to

43 procedures adopted by the board. The request for proposals shall include, but not be limited to,

44 the following terms and conditions that, upon selection by the board, shall be incorporated into

45 the certificate to operate a commonwealth virtual school:

46 (1) the mission, purpose, and specialized focus, if any, of the proposed commonwealth virtual

47 school;

48 (2) the educational program, instructional methodology and services to be offered to students;

49 (3) the organization of the school by ages of students or grades to be taught and an estimate of

50 the total enrollment of the commonwealth virtual school;

51 (4) the method for and timetable of admission to the commonwealth virtual school;

52 (5) the commonwealth virtual school governance and by-laws;

53 (6) the proposed school year;

54 (7) how the commonwealth virtual school shall administer state required assessment tests;

55 (8) a statement of equal educational opportunity which shall state that the commonwealth virtual
56 school shall be open to all students, on a space available basis, and shall not discriminate on the
57 basis of race, color, national origin, religion, sex, gender identity or sexual orientation;

58 (9) a description of any preferences the school shall give for enrollment, and how the school
59 shall conduct a lottery for admission if applications exceed enrollment capacity;

60 (10) the identity of any third party software or curriculum vendors that the school intends to use;

61 (11) a proposed arrangement or contract with an organization that shall manage or operate the
62 school, including any proposed or agreed upon payments to such organization;

63 (12) a demonstration of the applicant's capacity to support and store all critical student, program,
64 and staff data for expedient retrieval and analysis in compliance with federal and state laws;

65 (13) provisions for cyber safety;

66 (14) how the school shall notify each school district in writing of the number and grade levels of
67 students who shall be attending the commonwealth virtual school from that district within 10
68 days of the student registering for enrollment in the commonwealth virtual school;

69 (15) whether the commonwealth virtual school will offer online courses to students attending
70 other schools;

71 (16) the financial plan for the operation of the school;

72 (17) the number and qualifications of teachers and administrators to be employed;

73 (18) the procedures for evaluation and professional development for teachers and administrators,
74 including what training, if any, shall be provided to teachers who have not previously taught
75 online;

76 (19) the school's capacity to address the particular needs of English language learners to learn
77 English and learn content matter;

- 78 (20) the school’s plan to conduct outreach to prospective students;
- 79 (21) what supports shall be provided to students to help them complete courses, including the
- 80 school’s strategies for ensuring that an enrolled student shall complete the program and goals
- 81 regarding course completion and student achievement;
- 82
- 83 (22) how the school will monitor student progress in order to identify areas of difficulty and
- 84 assist students who need additional attention;
- 85 (23) where relevant, what supports will be provided to help students prepare for college and
- 86 careers;
- 87 (24) the school’s capacity to support students’ social-emotional growth;
- 88 (25) how the school shall create a community for students who are enrolled in the
- 89 commonwealth virtual school;
- 90 (26) how the applicant shall include activities to engage students;
- 91 (27) what, if any, in person activities, learning, or interaction will be provided or offered,
- 92 including extra-curricular activities;
- 93 (28) expectations for age appropriate supervision of students under the age of 14, if applicable;
- 94 (29) a description of where the student will access the course, including whether it is at home or
- 95 in a location provided and overseen by the applicant;
- 96 (30) methods to assure that all students shall have access to necessary technology and materials;
- 97 (31) what technical support shall be available to students, including whether the applicant shall
- 98 offer an orientation for taking an online course before starting the coursework;
- 99 (32) how the school shall define and monitor student attendance, including how it shall verify
- 100 that each student is participating in classes, how truancy shall be addressed, and goals regarding

101 student attendance;

102 (33) expectations and goals for teacher-student communication, and how teacher-student

103 interaction shall be documented;

104 (34) how the school shall involve parents and guardians as partners in the education of their

105 children and goals for parental and family engagement;

106 (35) the school's capacity to implement the proposal and provide high quality instructional

107 services;

108 (36) the student to teacher ratio; and

109 (37) whether the school will establish a personalized learning plan for each student, in

110 conjunction with student's school district of residence.

111 (c) The board shall make the final determination on selecting proposals; provided, however, that

112 the board holds a public hearing on the proposals to be attended by at least 1 member of the

113 board. Not more than 10 commonwealth virtual schools shall be allowed to operate in the

114 commonwealth at any time. The board may authorize a single board of trustees to manage more

115 than 1 commonwealth virtual school; provided, however, that each school is issued its own

116 certificate. Under no circumstances shall the total number of students attending commonwealth

117 virtual schools full-time exceed 2 per cent of the total number of students attending public

118 schools in the commonwealth. Not less than 5 per cent of the students enrolled in a virtual

119 school shall be from the school district that established the school. In the case of a virtual school

120 that is established by more than one school district or by an education collaborative, not less than

121 5 per cent of the students enrolled in the school shall be from the combined enrollment of the

122 districts that established the school or the districts that are members of the education
123 collaborative.

124 The board shall give preference to proposals that include an educational program or specialized
125 focus that appropriately addresses one or more of the following: students with physical or other
126 challenges that make it difficult for them to physically attend a school; students with medical
127 needs requiring a home or hospital setting; students with unusual needs requiring a flexible
128 schedule; students who are overage for their grade; students who have been expelled; students
129 who have dropped out; students at risk of dropping out; students who are pregnant or have a
130 child; students with social and emotional challenges that make it difficult for them to physically
131 attend a school; students who feel bullied or want to be out of school due to other safety
132 concerns; gifted and talented students; students who seek academic work not available in their
133 school; students in rural communities; and students in institutionalized settings.

134 The board shall also consider whether proposed schools will create or enhance the opportunity
135 for students to attend virtual schools in all grades from kindergarten through grade 12.

136 (d) A commonwealth virtual school shall operate under a certificate issued by the board and be
137 governed by a board of trustees. If a district or education collaborative operates the
138 commonwealth virtual school, then the board of trustees shall be appointed by the member
139 school committees of the district or the collaborative board. The board of trustees of a
140 commonwealth virtual school, upon being granted a certificate, shall be deemed to be a public
141 agent authorized by the commonwealth to supervise and control the commonwealth virtual
142 school. A commonwealth virtual school shall be deemed to be a state agency under chapter
143 268A and members of the board of trustees shall be deemed to be public employees under
144 chapter 268B.

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

147 (1) adopt a name and corporate seal; provided, that any name selected shall include the words
148 "commonwealth virtual school";

149 (2) acquire real property, from public or private sources, by lease, lease with an option to
150 purchase or by gift, for use as a school facility;

151 (3) receive and disburse funds for school purposes;

152 (4) incur temporary debt in anticipation of receipt of funds; provided that, notwithstanding any
153 general or special law to the contrary, the terms of repayment of any commonwealth virtual
154 school's debt shall not exceed the duration of the school's certificate without the approval of the
155 board;

156 (5) solicit and accept grants or gifts for school purposes; and

157 (6) determine the school's curriculum and develop the school's annual budget.

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

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

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

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

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

183 (j) A certificate to operate a commonwealth virtual school granted by the board shall be for no
184 less than 3 years and no more than 5 years. The board shall develop procedures and guidelines
185 for amending, revoking, and renewing a school's certificate. When deciding on certificate
186 renewal, the board shall consider progress made in student academic achievement and whether
187 the school has met its obligations and commitments under the certificate.

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

200 The department may retain not more than 75 dollars per pupil for the administration of the
201 commonwealth virtual school program.

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

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

207 (l) The department shall promulgate rules and regulations creating a reporting requirement for a
208 commonwealth virtual school's net asset balance at the end of each fiscal year; provided,
209 however, that said rules and regulations shall require, including but not limited to: the revenue
210 and expenditures for the prior fiscal year with a specific accounting of the uses of public and

211 private dollars; compensation and benefits for teachers, staff, administrators, executives, and
212 board of trustees; the amount of any and all funds paid to a management company; the sources of
213 any surplus funds, specifically whether they are private or public; how any surplus funds were
214 used in the previous fiscal year; and the planned use of any surplus funds in the upcoming fiscal
215 year and in future fiscal years. The board may establish limits for excess funds that may be
216 retained by commonwealth virtual schools, and may require commonwealth virtual schools to
217 return excess funds to school districts.

218 (m) Each commonwealth virtual school shall submit an annual report, on or before January 1, to
219 the board. The school shall make its report available to the public on its website. The annual
220 report shall be in such form as may be prescribed by the board and shall include, but not be
221 limited to: (1) a discussion of progress made toward the achievement of the goals set forth in the
222 certificate; (2) a list of the programs and courses offered; (3) a description and number of the
223 students enrolled in the commonwealth virtual school, by grade level, and the number of students
224 who applied and were not admitted; (4) a financial statement describing by appropriate
225 categories the revenue and expenditures for the prior fiscal year and a balance sheet describing
226 the commonwealth virtual school's assets, liabilities, and fund balances or equities; (5)
227 information regarding, and a discussion of, student attendance and participation; (6) information
228 regarding, and a discussion of, student-teacher interaction; (7) information regarding, and a
229 discussion of, student performance in the commonwealth virtual school, including data from
230 state assessments and a comparison of students' achievement against that of the student's
231 sending district; (8) a discussion of how many courses were completed and not completed; (9) a
232 discussion of how the school created a community for students; (10) what activities were
233 included to engage students and how students participated in those activities; (11) a discussion of

234 parental involvement; and (12) a discussion of the school's outreach and recruitment efforts,
235 provided, that said report shall include input from teachers and administrators at the virtual
236 school and input from administrators in a district that has established a virtual school or districts
237 that are members of a collaborative that has established a virtual school.

238 (n) Each commonwealth virtual school shall maintain an accurate account of all its activities and
239 all its receipts and expenditures and shall annually conduct an independent audit of its accounts.

240 Such audit shall be filed annually on or before January 1 with the department and the state
241 auditor and shall be in a form prescribed by the state auditor. The state auditor may investigate
242 the budget and finances of commonwealth virtual schools and their financial dealings,
243 transactions and relationships, and shall have the power to examine the records of
244 commonwealth virtual schools and to prescribe methods of accounting and the rendering of
245 periodic reports.

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

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

255 (1) the fiscal impact on sending districts;

256 (2) any necessary adjustments to tuition rates, including whether the amount should vary based
257 on grade or type of school and the appropriate mechanism for funding virtual schools;

258 (3) information on course completion and student attendance and participation rates;

259 (4) the academic achievement of students attending commonwealth virtual schools;

260 (5) what level of supervision or support is needed for students in elementary and middle school;

261 (6) what kind of supports are helpful to ensuring students successfully complete online courses;

262 (7) the kind of professional development virtual school teachers require;

263 (8) the appropriate enrollment limit for a virtual school, if any, including information about wait
264 lists; and

265 (9) the need for any changes to the commonwealth virtual school program.

266 The report shall partially be based on information in each commonwealth virtual school's annual
267 report and financial audits, and provided, further, that said report shall include input from virtual
268 school teachers and administrators. The commissioner shall consult with the digital learning
269 advisory council in the preparation of this report. The commissioner shall file the report with the
270 clerks of the house and senate and who shall forward the same to the joint committee on
271 education. The department shall make such report available to the public on the department's
272 website.

273 (q) The commissioner shall identify and offer information on online courses which are aligned
274 with state academic standards that districts may use, and shall publish that list on its website. At
275 least one of the options listed shall be available at no cost to school districts, provided that such

276 an option is available. The list shall be reviewed and updated annually.

277 Nothing in this subsection shall preclude school districts from using other courses not identified
278 by the commissioner.

279 (r) The board may promulgate regulations for implementation and enforcement of this section,
280 provided that the regulations may include, but not be limited to, a provision indicating the
281 appropriate percentage of online academic instruction provided for a school to be considered a
282 commonwealth virtual school pursuant to this act. Upon release of the proposed regulations, the
283 board shall file a copy thereof with the clerks of the house of representatives and the senate who
284 shall forward the regulations to the joint committee on education. Within 30 days of the filing,
285 the committee may hold a public hearing and issue a report on the regulations and file the report
286 with the board. The board, pursuant to applicable law, may adopt final regulations making
287 revisions to the proposed regulations as it deems appropriate after consideration of the report and
288 shall forthwith file a copy of the regulations with the chairpersons of the joint committee on
289 education and, not earlier than 30 days after the filing, the board shall file the final regulations
290 with the state secretary.

291 (s) Nothing herein shall preclude a student from taking some or all of his classes online when
292 such classes are offered or approved by the school he attends or by an educational collaborative
293 in which his school district participates.

294 This section shall not apply to a virtual school operated by a single school district if the school
295 enrolls only students residing in the school district.

296 This section shall not apply to a virtual school operated pursuant to an agreement entered into by
297 more than one school district or an education collaborative if the school enrolls only students

298 who reside in the school districts that have signed the agreement or in the school districts that are
299 members of an education collaborative; provided, however, that such districts shall submit a
300 summary description of the proposed virtual school to the commissioner for review and
301 comment at least 4 months in advance of the opening of the virtual school. The commissioner
302 shall then provide written comments on the proposal to each district's school committee.

303 SECTION 6. The board of elementary and secondary education shall grant a commonwealth
304 virtual school certificate of organization to the Greenfield Public Schools for the operation of the
305 Massachusetts Virtual Academy if the Greenfield Public Schools submits the information listed
306 in subsection (b) of section 94 of chapter 71 of the General Laws in response to the first request
307 for proposals issued pursuant to this act. Said certificate shall be for not less than 3 years and not
308 more than 5 years and shall be for a school that serves students in kindergarten through grade 12.

309 SECTION 7. The board of elementary and secondary education shall establish a digital learning
310 advisory council to advise the commissioner of elementary and secondary education regarding
311 virtual schools, supplemental online courses, education technology, and other matters related to
312 virtual education, including, but not limited to, recommendations for best practices to encourage
313 online education to complement classroom instruction in district schools and recommendations
314 on the appropriateness of the fee that the department may retain for the administration of the
315 virtual school program. The members of the council shall serve without compensation but may
316 be reimbursed subject to appropriation for expenses necessarily and reasonably incurred in the
317 performance of their responsibilities. The council shall be composed of 15 members who shall be
318 recommended by the commissioner of elementary and secondary education and appointed by the
319 board of elementary and secondary education and who shall not, by virtue of their membership,
320 be deemed state employees under chapter 268A, provided, that 1 member shall be a

321 representative of the American Federation of Teachers- Massachusetts, one member shall be a
322 representative of the Massachusetts Teachers Association, one member shall be a representative
323 of the Massachusetts Association of School Superintendents, one member shall be a
324 representative of the Massachusetts Association of School Committees, one member shall be a
325 representative of a non-profit organization that conducts research and training related to online
326 education, one member shall be a representative of an institution of higher education that
327 provides online education for students in any grades from kindergarten through 12, and one
328 member shall be a representative of the Massachusetts Virtual High School. Members shall be
329 appointed for a term of 3 years. No member shall serve for more than 2 consecutive terms. The
330 members serving on the council may be school committee members, school superintendents,
331 professional educators, parents, students, or individuals with expertise in virtual education. A
332 reasonable balance of members representing business, labor, civic, educational, parental and
333 professional groups shall be maintained. Members serving on the council shall represent a
334 reasonable statewide geographic balance. The council shall meet no less than twice each year.
335 The commissioner, with the approval of the board, shall appoint the chair of the council. The
336 commissioner or his designee shall serve as the secretary to the council.

337 SECTION 8. The board of elementary and secondary education shall select not more than 3
338 commonwealth virtual schools for the 2013-2016 school years, not more than 3 additional
339 commonwealth virtual schools for the 2016-2019 school years, and not more than 4 additional
340 commonwealth virtual schools for the 2019-2020 school year; provided, that only school districts
341 and education collaboratives shall be eligible to apply for certificates of organization to operate
342 through the 2013-2019 school years.

343 SECTION 9. Section 4 shall take effect on July 1, 2013.

344 SECTION 10. The commissioner of elementary and secondary education shall publish a list of
345 online courses which are aligned with state academic standards that school districts may use on
346 the department's website on or before June 30, 2014.