

# HOUSE . . . . . No. 03873

By Ms. Peisch of Wellesley, for the committee on Education, on House, Nos. 1050, 1090 and 1960, a Bill establishing commonwealth virtual schools (House, No. 3873) January 12, 2012.

## 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 92 of Chapter 71 of the General Laws, as most recently amended by
- 2 chapter 142 of the acts of 2011, is hereby amended by inserting, in subsection (e), the word “or”
- 3 before the words “(iii) the simultaneous establishment” and by striking out, in subsection (e), the
- 4 words “or (iv) the establishment of an Innovation School as a virtual public school that provides
- 5 instruction to students through distance learning, including online learning programs and
- 6 courses, subject to regulations adopted by the board of elementary and secondary education”
- 7 SECTION 2. Said section 92 is hereby further amended by striking subsection (q).

8 SECTION 3. Chapter 71 of the General Laws is hereby amended by adding the following  
9 section:

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

12 "Board", the board of elementary and secondary education;

13 "Commissioner", the commissioner of elementary and secondary education;

14 "Commonwealth virtual school", a public school operated by a board of trustees whose  
15 teachers teach primarily from a remote location using the Internet or other computer-based  
16 methods, with students not required to be located at a physical premises of the school, and whose  
17 students receive 80 per cent or more of their academic instruction on-line;

18 "Contract", a contract between a commonwealth virtual school board of trustees and the board of  
19 elementary and secondary education which governs how the commonwealth virtual school shall  
20 operate;

21 "Department", the department of elementary and secondary education;

22 "District", or "school district", the school department of a city, town, regional school district, or  
23 county agricultural school; and

24 "Education collaborative", an association of 2 or more school committees of municipalities,  
25 regional school districts, or boards of trustees of charter schools established pursuant to section  
26 4E of chapter 40.

27 (b) A commonwealth virtual school shall operate under a contract with the board and be  
28 governed by a board of trustees. If a district or education collaborative operates the  
29 commonwealth virtual school then the board of trustees shall be appointed by the member school  
30 committee or committees or collaborative board. The board of trustees of a commonwealth  
31 virtual school, upon entering into a contract with the board, shall be deemed to be a public agent  
32 authorized by the commonwealth to supervise and control the commonwealth virtual school.  
33 Persons or entities eligible to submit a proposal to establish a commonwealth virtual school shall  
34 include, but not be limited to: (i) a school district; (ii) an education collaborative; (iii) a public  
35 institution of higher education; (iv) a non-profit business or corporate entity; (v) 2 or more  
36 certified teachers; or (vi) parents; provided that no for profit business or corporate entity shall be  
37 eligible to submit a proposal. Private and parochial schools shall not be eligible for  
38 commonwealth virtual school status. The board may authorize a single board of trustees to  
39 manage more than 1 commonwealth virtual school; provided, however, that each school is issued  
40 its own contract.

41 The board shall issue a request for proposals to establish 1 or more commonwealth virtual  
42 schools by February 1st of each year. The request for proposals shall include, but not be limited  
43 to, terms and conditions to be incorporated into a contract to operate a commonwealth virtual  
44 school. A response to the request for proposals shall include, but not be limited to:-

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

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

- 48 (3) the organization of the school by ages of students or grades to be taught and an estimate of  
49 the total enrollment of the commonwealth virtual school;
- 50 (4) the method for and timetable of admission to the commonwealth virtual school;
- 51 (5) the commonwealth virtual school governance and by-laws;
- 52 (6) the proposed school year;
- 53 (7) how the commonwealth virtual school shall administer state required assessment tests;
- 54 (8) a statement of equal educational opportunity which shall state that the commonwealth virtual  
55 school shall be open to all students, on a space available basis, and shall not discriminate on the  
56 basis of race, color, national origin, religion, sex, gender identity or sexual orientation;
- 57 (9) a description of any preferences the school shall give for enrollment, and how the school  
58 shall conduct a lottery for admission if applications exceed enrollment capacity;
- 59 (10) the identity of any third party software or curriculum vendors that the school intends to use,  
60 if any;
- 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;
- 65 (13) provisions for cyber safety;

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

69 (15) a description of the fee structure and how a school district shall be charged for services  
70 provided;

71 (16) whether the commonwealth virtual school will offer online courses to students attending  
72 other schools, and, if so, how the commonwealth virtual school will work with the sending  
73 district or school to determine whether the online courses meet said district's or school's  
74 standards and requirements and what the commonwealth virtual school will charge for online  
75 courses;

76 (17) the financial plan for the operation of the school;

77 (18) the number and qualifications of teachers and administrators to be employed, including the  
78 number and qualifications of teachers or administrators to be employed who are not licensed in  
79 Massachusetts;

80 (19) the procedures for evaluation and professional development for teachers and administrators,  
81 including what training, if any, shall be provided to teachers who have not previously taught  
82 online;

83 (20) the school's capacity to address the particular needs of English language learners to learn  
84 English and learn content matter;

85 (21) the school's plan to conduct outreach to prospective students;

86 (22) what supports, if any, shall be provided to students to help them complete courses, including  
87 the school's strategies for ensuring that an enrolled student shall complete the program;

88 (23) how the school will monitor student progress in order to identify areas of difficulty and  
89 assist students who need additional attention;

90 (24) where relevant, what supports will be provided to help students prepare for college and  
91 careers;

92 (25) the school's capacity to support students' social-emotional growth;

93 (26) how the school shall create a community for students who are enrolled in the  
94 commonwealth virtual school;

95 (27) how the applicant shall include activities to engage students;

96 (28) what, if any, on-site activities, learning, or interaction will be provided or offered, including  
97 extra-curricular activities;

98 (29) expectations for age appropriate supervision of students under the age of 14, if applicable;

99 (30) a description of where the student will access the course, whether it is at home or in a  
100 location provided and overseen by the applicant;

101 (31) methods to assure that all students shall have access to necessary technology and materials;

102 (32) what technical support shall be available to students, including whether the applicant shall  
103 offer an orientation for taking an online course before starting the coursework;

104 (33) how the school shall define and monitor student attendance, including how it shall verify  
105 that each student is participating in classes, and how truancy shall be addressed;

106 (34) expectations for teacher-student communication, and how teacher-student interaction shall  
107 be documented;

108 (35) how the school shall involve parents and guardians as partners in the education of their  
109 children;

110 (36) the school's capacity to instruct students with special needs, including, as appropriate,  
111 students who have been expelled from a school district; students with physical or other  
112 challenges that make it difficult for them to physically attend a school; students with special  
113 medical needs requiring a home or hospital setting; students with special needs requiring a  
114 flexible schedule; students who are overage for their grade; students who have dropped out;  
115 students with special social and emotional needs; and students in institutionalized settings;

116 (37) whether the school will provide meals to students eligible for free and reduced price lunch;  
117 and

118 (38) the school's capacity to implement the proposal and provide high quality instructional  
119 services.

120 (c) A commonwealth virtual school board of trustees shall be selected from the responses to the  
121 request for proposals issued pursuant to subsection (b) and awarded a contract pursuant to  
122 procedures adopted by the board; provided, that the board selects a qualified applicant. Such  
123 procedures shall, at a minimum, provide for the following: (i) the request for proposals issued

124 by the board shall be publicly advertised; and (ii) the consideration of proposals shall include a  
125 public hearing, which shall be attended by at least one member of the board.

126 The board shall make the final determination on selecting proposals. Not more than 10  
127 commonwealth virtual schools shall be allowed to operate in the commonwealth at any time.

128 Under no circumstances shall the total number of students attending commonwealth virtual  
129 schools exceed 2 per cent of the total number of students attending public schools in the  
130 commonwealth.

131 Any report prepared by the department or its administrative subdivisions regarding a  
132 commonwealth virtual school proposal shall be delivered to the members of the board and the  
133 applicant no more than 10 days after the completion of said report; provided, that said report  
134 shall be delivered before the board makes its final determination on selecting proposals.

135 The board shall give preference to proposals with an educational program or specialized focus  
136 that appropriately addresses the following: students with physical or other challenges that make  
137 it difficult for them to physically attend a school; students with special medical needs requiring a  
138 home or hospital setting; students with special needs requiring a flexible schedule; students who  
139 are overage for their grade; students who have been expelled; students who have dropped out;  
140 students at risk of dropping out; students who are pregnant or have a child; students with special  
141 social and emotional needs; gifted and talented students; students in rural communities; and  
142 students in institutionalized settings.

143 The board shall also consider whether proposals will allow students the option of continuing in  
144 virtual schools through grade 12.



145 (d) Any contract established in subsection (c) shall be subject to the following terms and  
146 conditions:

147 A commonwealth virtual school established by a contract granted by the board shall have all  
148 powers necessary or desirable for carrying out its virtual program, including, but not limited to,  
149 the power to:

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

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

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

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

159 (5) solicit and accept grants or gifts for school purposes.

160 (e) A commonwealth virtual school may provide access to its courses in an existing public  
161 school building, or any other suitable location.

162 (f) A commonwealth virtual school shall comply with all applicable state and federal health and  
163 safety laws and regulations. Students in commonwealth virtual schools shall be required to meet  
164 the same performance standards, testing and portfolio requirements set by the board for students  
165 in other public schools.

166 (g) Commonwealth virtual schools shall comply with chapter 71B; provided, however, that the  
167 fiscal responsibility of a special needs student currently enrolled in or determined to require a  
168 private day or residential school shall remain with the school district where the student resides. If  
169 a commonwealth virtual school expects that a special needs student currently enrolled in the  
170 commonwealth virtual school may be in need of the services of a private day or residential  
171 school, it shall convene an individual education plan team meeting for the student. Notice of the  
172 team meeting shall be provided to the special education department of the school district in  
173 which the child resides at least 5 days in advance. Personnel from the school district in which  
174 the child resides shall participate in the team meeting concerning future placement of and  
175 services for the child.

176 (h) The provisions of chapter 268A that currently apply to school districts and school committees  
177 shall also apply to commonwealth virtual schools and commonwealth virtual school boards of  
178 trustees. In the event that a contract is awarded to a non-public entity, that commonwealth  
179 virtual school and its board of trustees shall be subject to the provisions of chapter 268A in the  
180 same manner as school districts and school committees.

181 (i) The board of trustees shall determine the school's curriculum and develop the school's annual  
182 budget.

183 (j) No teacher shall be hired by a commonwealth virtual school who is not certified pursuant to  
184 section 38G unless the teacher has successfully passed either the state teacher test pursuant to  
185 section 38G, is licensed to teach in another state, or is a faculty member at an accredited  
186 institution of higher education.

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

192 (l) The department, in consultation with the operational services division, shall determine the  
193 amount of tuition per pupil a school district shall pay for its student or students that enroll in a  
194 commonwealth virtual school, and the method by which the district shall pay the tuition;  
195 provided, that the department may retain not more than 75 dollars per pupil for the  
196 administration of the commonwealth virtual school program; provided further, that the base per  
197 pupil tuition shall not exceed 75 per cent of the state average per pupil foundation budget for  
198 students of the same classification and grade level; and provided, further, that the department  
199 may make additional tuition assessments for special education students to support an appropriate  
200 education as is required by such student.

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

203 (m) The department shall promulgate rules and regulations creating a reporting requirement for a  
204 commonwealth virtual school's net asset balance at the end of each fiscal year; provided,  
205 however, that said rules and regulations shall require, including but not limited to: the revenue  
206 and expenditures for the prior fiscal year with a specific accounting of the uses of public and  
207 private dollars; compensation and benefits for teachers, staff, administrators, executives, and  
208 board of trustees; the amount of any and all funds transferred to a management company; the

209 sources of any surplus funds, specifically whether they are private or public; how any surplus  
210 funds were used in the previous fiscal year; and the planned use of any surplus funds in the  
211 upcoming fiscal year and in future fiscal years. The board may establish limits for excess funds  
212 that may be retained by commonwealth virtual schools, and may require commonwealth virtual  
213 schools to return excess funds to school districts.

214 (n) Each commonwealth virtual school shall submit an annual report, on or before August 1, to  
215 the board, who shall make each report available to the public on its website. The annual report  
216 shall be in such form as may be prescribed by the board and shall include, but not be limited to:  
217 (1) a discussion of progress made toward the achievement of the goals set forth in the contract;  
218 (2) a list of the programs and courses offered; (3) a description and number of the students  
219 enrolled in the commonwealth virtual school, by grade level; (4) a financial statement describing  
220 by appropriate categories the revenue and expenditures for the prior fiscal year and a balance  
221 sheet describing the commonwealth virtual school's assets, liabilities, and fund balances or  
222 equities; (5) information regarding, and a discussion of, student attendance and participation; (6)  
223 information regarding, and a discussion of, student-teacher interaction; (7) information  
224 regarding, and a discussion of, student performance in the commonwealth virtual school,  
225 including data from state assessments and a comparison of students' achievement against that of  
226 the student's sending district; (8) a discussion of how many courses were completed and not  
227 completed; (9) a discussion of how the school created a community for students; (10) what  
228 activities were included to engage students and how students participated in those activities; (11)  
229 a discussion of parental involvement; and (12) a discussion of the school's outreach and  
230 recruitment efforts.

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

239 (p) The commissioner shall collect data on the racial, ethnic and socio-economic make-up of the  
240 student enrollment of each commonwealth virtual school. The commissioner shall also collect  
241 data on the number of students enrolled in each commonwealth virtual school who have  
242 individual education plans pursuant to chapter 71B. The commissioner shall file said data  
243 annually with the clerks of the house and senate who shall forward the same to the joint  
244 committee on education on or before December 1, and shall make such report available to the  
245 public on the department's website.

246 (q) Annually, the commissioner shall prepare a report on the implementation and fiscal impact of  
247 this section, including the impact on sending districts, the need for any changes to the  
248 commonwealth virtual school program, including any necessary adjustments to tuition rates, and  
249 shall file the report with the clerks of the house and senate who shall forward the same to the  
250 joint committee on education, the house and senate committees on ways and means, the speaker  
251 of the house of representatives, and the senate president.

252 (r) The commissioner shall identify and offer information on online courses which are aligned  
253 with state academic standards that districts may use, and shall publish that list on its website. At  
254 least one of the options listed shall be available at no cost to school districts; provided, that such  
255 an option is available. The list shall be reviewed and updated annually.

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

258 (s) The board may promulgate regulations for implementation and enforcement of this section.

259 SECTION 4. An existing virtual innovation school established by section 92 of chapter 71 that  
260 plans to convert to a commonwealth virtual school shall notify the board in writing 60 days after  
261 the effective date of this act, and shall complete the steps required in this act within one year of  
262 its effective date. If such existing virtual innovation school fails to notify the board 60 days after  
263 the effective date of this act, it shall cease operating on June 30 of the first school year  
264 commencing after the effective date of this act.

265 SECTION 5. The board of elementary and secondary education shall establish an online learning  
266 advisory council to advise the commissioner of elementary and secondary education regarding  
267 virtual schools, supplemental online courses, and other matters related to virtual education. The  
268 members of the council shall serve without compensation but may be reimbursed subject to  
269 appropriation for expenses necessarily and reasonably incurred in the performance of their  
270 responsibilities. The council shall be composed of 15 members who shall be recommended by  
271 the commissioner and appointed by the board of elementary and secondary education who shall  
272 not, by virtue of their membership, be deemed state employees under chapter 268A. Members  
273 shall be appointed for a term of 3 years. No member shall serve for more than 2 consecutive

274 terms. The members serving on the council may be school committee members, school  
275 superintendents, professional educators, parents, students, or individuals with expertise in virtual  
276 education. A reasonable balance of members representing business, labor, civic, educational,  
277 parental and professional groups shall be maintained. Members serving on the council shall  
278 represent a reasonable statewide geographic balance.

279 The commissioner, with the approval of the board, shall appoint the chair of the council. The  
280 commissioner or his designee shall serve as the secretary to the council.

281 SECTION 6. For the 2012-2013 school year, the board of elementary and secondary education  
282 may issue a request for proposals later than February 1, 2012, in order to allow a commonwealth  
283 virtual school to open for that school year.

284 SECTION 7. Pursuant to SECTION 1, the board of elementary and secondary education shall  
285 select not more than 3 commonwealth virtual schools for the 2012-2014 school years, not more  
286 than 3 additional commonwealth virtual schools for the 2014-2016 school years, and not more  
287 than 4 commonwealth virtual schools for the 2016-2017 school year; provided, that only school  
288 districts and education collaboratives shall be eligible to apply for contracts pursuant to  
289 SECTION 1 in the first 2 years.

290 SECTION 8. Section 2 shall take effect on July 1, 2013.

291 SECTION 9. Pursuant to subsection (r) of SECTION 3, the list of online courses shall be  
292 published on the department's website on or before June 30, 2014.