HOUSE . . . . . No. 3873

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 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:

SECTION 1. Section 92 of Chapter 71 of the General Laws, as most recently amended by chapter 142 of the acts of 2011, is hereby amended by inserting, in subsection (e), the word “or” before the words “(iii) the simultaneous establishment” and by striking out, in subsection (e), the words “or (iv) the establishment of an Innovation School as a virtual public school that provides instruction to students through distance learning, including online learning programs and courses, subject to regulations adopted by the board of elementary and secondary education”

SECTION 2. Said section 92 is hereby further amended by striking subsection (q).

SECTION 3. Chapter 71 of the General Laws is hereby 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 teach primarily from a remote location using the Internet or other computer-based methods, with students not required to be located at a physical premises of the school, and whose 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
19 board of elementary and secondary education which governs how the commonwealth virtual
20 school shall operate;

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

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

24 “Education collaborative”, an association of 2 or more school committees of
25 municipalities, regional school districts, or boards of trustees of charter schools established
26 pursuant to section 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
46 virtual school;

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

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

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

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

61 (10) the identity of any third party software or curriculum vendors that the school intends
62 to use, if any;

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

65 (12) a demonstration of the applicant's capacity to support and store all critical student,
66 program, and staff data for expedient retrieval and analysis;

67 (13) provisions for cyber safety;

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

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

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

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

80 (18) the number and qualifications of teachers and administrators to be employed,
81 including the number and qualifications of teachers or administrators to be employed who are not
82 licensed in Massachusetts;

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

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

88 (21) the school’s plan to conduct outreach to prospective students;

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

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

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

96 (25) the school’s capacity to support students’ social-emotional growth;

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

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

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

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

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

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

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

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

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

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

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

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

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

126 (c) A commonwealth virtual school board of trustees shall be selected from the responses
127 to the request for proposals issued pursuant to subsection (b) and awarded a contract pursuant to
128 procedures adopted by the board; provided, that the board selects a qualified applicant. Such
129 procedures shall, at a minimum, provide for the following: (i) the request for proposals issued
130 by the board shall be publicly advertised; and (ii) the consideration of proposals shall include a
131 public hearing, which shall be attended by at least one member of the board.

132 The board shall make the final determination on selecting proposals. Not more than 10
133 commonwealth virtual schools shall be allowed to operate in the commonwealth at any time.
134 Under no circumstances shall the total number of students attending commonwealth virtual
135 schools exceed 2 per cent of the total number of students attending public schools in the
136 commonwealth.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

209 (m) The department shall promulgate rules and regulations creating a reporting
210 requirement for a commonwealth virtual school's net asset balance at the end of each fiscal year;
211 provided, however, that said rules and regulations shall require, including but not limited to: the
212 revenue and expenditures for the prior fiscal year with a specific accounting of the uses of public
213 and private dollars; compensation and benefits for teachers, staff, administrators, executives, and
214 board of trustees; the amount of any and all funds transferred to a management company; the
215 sources of any surplus funds, specifically whether they are private or public; how any surplus
216 funds were used in the previous fiscal year; and the planned use of any surplus funds in the
217 upcoming fiscal year and in future fiscal years. The board may establish limits for excess funds

218 that may be retained by commonwealth virtual schools, and may require commonwealth virtual
219 schools to return excess funds to school districts.

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

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

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

252 (q) Annually, the commissioner shall prepare a report on the implementation and fiscal
253 impact of this section, including the impact on sending districts, the need for any changes to the
254 commonwealth virtual school program, including any necessary adjustments to tuition rates, and
255 shall file the report with the clerks of the house and senate who shall forward the same to the

256 joint committee on education, the house and senate committees on ways and means, the speaker
257 of the house of representatives, and the senate president.

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

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

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

266 SECTION 4. An existing virtual innovation school established by section 92 of chapter
267 71 that plans to convert to a commonwealth virtual school shall notify the board in writing 60
268 days after the effective date of this act, and shall complete the steps required in this act within
269 one year of its effective date. If such existing virtual innovation school fails to notify the board
270 60 days after the effective date of this act, it shall cease operating on June 30 of the first school
271 year commencing after the effective date of this act.

272 SECTION 5. The board of elementary and secondary education shall establish an online
273 learning advisory council to advise the commissioner of elementary and secondary education
274 regarding virtual schools, supplemental online courses, and other matters related to virtual
275 education. The members of the council shall serve without compensation but may be reimbursed
276 subject to appropriation for expenses necessarily and reasonably incurred in the performance of
277 their responsibilities. The council shall be composed of 15 members who shall be recommended
278 by the commissioner and appointed by the board of elementary and secondary education who
279 shall not, by virtue of their membership, be deemed state employees under chapter 268A.
280 Members shall be appointed for a term of 3 years. No member shall serve for more than 2
281 consecutive terms. The members serving on the council may be school committee members,
282 school superintendents, professional educators, parents, students, or individuals with expertise in
283 virtual education. A reasonable balance of members representing business, labor, civic,
284 educational, parental and professional groups shall be maintained. Members serving on the
285 council shall represent a reasonable statewide geographic balance.

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

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

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

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

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