

HOUSE No. 2467

The Commonwealth of Massachusetts

Senate, December 6, 2012.

BILL #: H04274

BILL STATUS: Favorable with Amendment

DISSENTERS:

None

ACCOMPANIED BILLS:

None

For the committee,

STEPHEN M. BREWER

SENATE No. 2467

[Pin Slip]

The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

1 SECTION 1. Section 1G of chapter 15 of the General Laws, as appearing in the 2010
2 Official Edition, is hereby amended by striking out, in line 6, the words “technology education”
3 and 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
5 amended by striking out the sixth paragraph.

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

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

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

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

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

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

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

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

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

23 "District" or "school district", the school department of a city, town, regional school
24 district or county agricultural school.

25 "Education collaborative", an association of 2 or more school committees or boards of
26 trustees of charter schools established under section 4E of chapter 40.

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

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

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

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

45 (3) the organization of the school by ages of students or grades to be taught and an
46 estimate of the total enrollment of the commonwealth virtual school;

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

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

50 (6) the proposed school year;

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

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

57 (9) a description of any preferences the school shall give for enrollment and how
58 the school 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
60 intends to use;

61 (11) a proposed arrangement or contract with an organization that shall manage or
62 operate the 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
64 student, program and staff data for expedient retrieval and analysis in compliance with federal
65 and state laws;

66 (13) provisions for cyber safety;

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

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

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

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

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

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

80 (20) the school's plan to conduct outreach to prospective students;

81 (21) what supports shall be provided to students to help them complete courses,
82 including the school's strategies for ensuring that an enrolled student shall complete the program
83 and goals regarding course completion and student achievement;

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

86 (23) where relevant, what supports will be provided to help students prepare for
87 college and careers;

88 (24) the school's capacity to support students' social and emotional growth;

89 (25) how the school shall create a community for students who are enrolled in the
90 commonwealth virtual school;

91 (26) how the commonwealth virtual school applicant shall include activities to
92 engage students;

93 (27) what, if any, in person activities, learning or interaction will be provided or
94 offered, including extra-curricular activities;

95 (28) expectations for age appropriate supervision of students under the age of 14,
96 if applicable;

97 (29) a description of where students will access the school's courses, including
98 whether it is in the home or in a location provided and overseen by the commonwealth virtual
99 school applicant;

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

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

105 (32) how the school shall define and monitor student attendance, including how it
106 shall verify that each student is participating in classes, how truancy shall be addressed and goals
107 regarding student attendance;

108 (33) expectations and goals for communication between teachers and students and
109 how such interaction shall be documented;

110 (34) how the school shall involve parents and guardians as partners in the
111 education of the children and goals for parental and family engagement;

112 (35) the school's capacity to implement the proposal and provide high quality
113 instructional services;

114 (36) the school's capacity to instruct students in the following categories, if the
115 school intends to serve any such students: students with physical or other challenges that make it

116 difficult for them to physically attend a school; students with medical needs requiring a home or
117 hospital setting; students with unusual needs requiring a flexible schedule; students who are
118 over-age for their grade; students who have been expelled; students who have dropped out or are
119 at risk of dropping out; students who are pregnant or have a child; students with social and
120 emotional challenges that make it difficult for them to physically attend a school; students who
121 feel bullied or cannot attend school because their safety is at risk; gifted and talented students;
122 students who seek academic work not available in their school; students in rural communities;
123 and students in institutionalized settings;

124 (37) whether the school proposes a mechanism to provide meals to students
125 eligible for free and reduced price lunch;

126 (38) the student to teacher ratio; and

127 (39) whether the school will establish a personalized learning plan for each
128 student, in conjunction with the student's school district of residence.

129 (c) The board shall make the final determination on selecting proposals; provided,
130 however, that the board shall only grant a certificate to a qualified applicant as determined by the
131 board; provided further, that the board shall hold a public hearing on the proposals which shall
132 be attended by at least 1 member of the board. Not more than 10 commonwealth virtual schools
133 shall be allowed to operate in the commonwealth at any time; provided, however, that a
134 commonwealth virtual school operated by a single school district, under an agreement entered
135 into by more than 1 school district or by an education collaborative shall not be counted towards
136 this limit if the commonwealth virtual school only enrolls students who reside in the school
137 district, in the school districts that signed the agreement or in the school districts that are

138 members of an education collaborative. The board may authorize a single board of trustees to
139 manage more than 1 commonwealth virtual school; provided, however, that each school is issued
140 its own certificate. Under no circumstances shall the total number of full-time students attending
141 commonwealth virtual schools exceed 2 per cent of the total number of students attending public
142 schools in the commonwealth. In the case of a commonwealth virtual school that is established
143 by a school district, not less than 5 per cent of the students enrolled in the commonwealth virtual
144 school shall be from the school district that established the school. In the case of a
145 commonwealth virtual school that is established by more than 1 school district or by an
146 education collaborative, not less than 5 per cent of the students enrolled in the school shall be
147 from the combined enrollment of the districts that established the school or the districts that are
148 members of the education collaborative.

149 The board shall give preference to proposals that include an educational program or
150 specialized focus that appropriately addresses 1 or more of the following: students with physical
151 or other challenges that make it difficult for them to physically attend a school; students with
152 medical needs requiring a home or hospital setting; students with unusual needs requiring a
153 flexible schedule; students who are over-age for their grade; students who have been expelled;
154 students who have dropped out; students at risk of dropping out; students who are pregnant or
155 have a child; students with social and emotional challenges that make it difficult for them to
156 physically attend a school; students who feel bullied or cannot attend school because the
157 students' safety is at risk; gifted and talented students; students who seek academic work not
158 available in their school; students in rural communities; and students in institutionalized settings.

159 The board shall also consider whether proposed schools will create or enhance the
160 opportunity for students to attend virtual schools in all grades from kindergarten to grade 12,
161 inclusive.

162 (d) A commonwealth virtual school shall operate under a certificate issued by the board
163 and be governed by a board of trustees. If a district or education collaborative operates the
164 commonwealth virtual school, then the board of trustees shall be appointed by the member
165 school committees of the district or the collaborative board. The board of trustees of a
166 commonwealth virtual school, upon being granted a certificate, shall be deemed to be a public
167 agent authorized by the commonwealth to supervise and control the commonwealth virtual
168 school. A commonwealth virtual school shall be deemed to be a state agency under chapter
169 268A and members of the board of trustees shall be deemed to be public employees under
170 chapter 268B.

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

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

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

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

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

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

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

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

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

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

198 (h) Commonwealth virtual schools shall comply with chapter 71B; provided, however,
199 that the fiscal responsibility for a student with a disability enrolled in or determined to require a

200 private day or residential school shall remain with the school district where the student resides. If
201 a commonwealth virtual school expects that a student with a disability enrolled in the
202 commonwealth virtual school may be in need of the services of a private day or residential
203 school, it shall convene an individualized education program team meeting for the student.
204 Notice of the team meeting shall be provided to the special education department of the school
205 district in which the child resides at least 5 days in advance. Personnel from the school district in
206 which the child resides shall participate in the team meeting concerning future placement of and
207 services for the child and shall agree on the needed services for the child.

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

211 (j) A certificate to operate a commonwealth virtual school granted by the board shall be
212 for not less than 3 years and not more than 5 years, as determined by the board. The board shall
213 develop procedures and guidelines for amending, revoking and renewing a virtual school's
214 certificate. When deciding on certificate renewal, the board shall consider progress made in
215 student academic achievement and whether the school has met its obligations and commitments
216 under the certificate.

217 (k) The amount of tuition per pupil a school district shall pay for a student residing in the
218 district who is enrolled in a commonwealth virtual school shall be the school choice tuition
219 amount, which shall be paid through the school choice mechanism; provided, that the department
220 may, in consultation with the operational services division, approve alternative tuition amounts
221 proposed by applicants that shall not exceed the state average per pupil foundation budget for

222 students of the same classification and grade level; and provided, further, that the department
223 may authorize additional tuition assessments for services required by an individualized education
224 program established under chapter 71B. If a commonwealth virtual school offers online courses
225 to students attending other schools, the commonwealth virtual school shall work with the
226 student's district or school to determine whether the online courses meet the district's or school's
227 standards and requirements and what the commonwealth virtual school will charge the student's
228 district or school for such online courses.

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

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

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

236 (1) The department shall promulgate rules and regulations creating a reporting
237 requirement for a commonwealth virtual school's net asset balance at the end of each fiscal year;
238 provided, however, that the report shall include, but not be limited to: the revenue and
239 expenditures for the prior fiscal year with a specific accounting of the uses of public and private
240 dollars; compensation and benefits for teachers, staff, administrators, executives and members of
241 the board of trustees; the amount of funds paid to a management company; the sources of surplus
242 funds, specifically whether the funds are private or public; how surplus funds were used in the
243 previous fiscal year; and the planned use of surplus funds in the upcoming fiscal year and in

244 future fiscal years. The board may establish limits for excess funds that may be retained by
245 commonwealth virtual schools and may require commonwealth virtual schools to return excess
246 funds to school districts.

247 (m) Each commonwealth virtual school shall submit an annual report, not later than
248 January 1, to the board. The school shall make its report available to the public on its website.
249 The annual report shall be in the form as may be prescribed by the board and shall include, but
250 not be limited to: (1) a discussion of progress made toward the achievement of the goals set forth
251 in the certificate; (2) a list of the programs and courses offered; (3) a description and number of
252 the students enrolled in the commonwealth virtual school by grade level, the number of students
253 eligible for free and reduced price lunch and the number of students who applied and were not
254 admitted; (4) a financial statement describing by appropriate categories the revenue and
255 expenditures for the prior fiscal year and a balance sheet describing the commonwealth virtual
256 school's assets, liabilities and fund balances or equities; (5) information regarding and a
257 discussion of student attendance and participation; (6) information regarding and a discussion of
258 student-teacher interaction; (7) information regarding and a discussion of student performance in
259 the commonwealth virtual school, including data from state assessments and a comparison of
260 students' achievement against the achievement of the students in the sending district; (8) a
261 discussion of how many courses were completed and not completed; (9) a discussion of how the
262 school created a community for students; (10) what activities were included to engage students
263 and how students participated in those activities; (11) a discussion of parental involvement; and
264 (12) a discussion of the school's outreach and recruitment efforts. The report shall include input
265 from teachers and administrators at the virtual school and input from administrators in a district

266 that has established a virtual school or districts that are members of an education collaborative
267 that has established a virtual school.

268 (n) Each commonwealth virtual school shall maintain an accurate account of all its
269 activities and all its receipts and expenditures and shall annually conduct an independent audit of
270 its accounts. Such audit shall be filed annually, not later than January 1 with the department and
271 the state auditor and shall be in a form prescribed by the state auditor. The state auditor may
272 investigate the budget and finances of commonwealth virtual schools and their financial
273 dealings, transactions and relationships and shall have the power to examine the records of
274 commonwealth virtual schools and to prescribe methods of accounting and the rendering of
275 periodic reports.

276 (o) Annually, not later than September 1, the commissioner shall furnish a supplemental
277 report on the Massachusetts comprehensive assessment system performance results of students
278 served by each commonwealth virtual school and on the racial, ethnic and socio-economic make-
279 up of the students served by each commonwealth virtual school. The commissioner shall also
280 provide information on the number of students enrolled in each commonwealth virtual school
281 who have individualized education programs under chapter 71B. The department shall make that
282 report available to the public on the department's website.

283 (p) Annually, not later than September 1, the commissioner shall prepare a report on the
284 implementation and impact of this section, including, but not limited to:

285 (1) the fiscal impact on sending districts;

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

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

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

293 (5) the level of supervision or support needed for students in elementary and
294 middle school;

295 (6) the support necessary or helpful to ensure that students successfully complete
296 online courses;

297 (7) the professional development virtual school teachers require;

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

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

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

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

313 (r) The board may promulgate regulations for implementation and enforcement of this
314 section, provided that the regulations may include, but shall not be limited to, a provision
315 indicating the appropriate percentage of online academic instruction provided for a school to be
316 considered a commonwealth virtual school under this section. Upon release of the proposed
317 regulations, the board shall file a copy of the regulations with the clerks of the house of
318 representatives and the senate, who shall forward the regulations to the joint committee on
319 education. Within 30 days of the filing, the committee may hold a public hearing and issue a
320 report on the regulations and file the report with the board. The board, under applicable law,
321 may adopt final regulations making revisions to the proposed regulations as it deems appropriate
322 after consideration of the report and shall file a copy of the regulations with the chairpersons of
323 the joint committee on education and, not earlier than 30 days after the filing, the board shall file
324 the final regulations with the state secretary.

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

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

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

338 SECTION 6. The board of elementary and secondary education shall grant a
339 commonwealth virtual school certificate of organization to the Greenfield public schools for the
340 operation of the Massachusetts Virtual Academy if the Greenfield public schools submits the
341 information listed in subsection (b) of section 94 of chapter 71 of the General Laws in response
342 to the first request for proposals issued under this act. Said certificate shall be for not less than 3
343 years and not more than 5 years and shall be for a school that serves students in kindergarten to
344 grade 12, inclusive. Notwithstanding subsection (c) of section 94 of chapter 71 of the General
345 Laws, for the period of the initial certificate not less than 2 per cent of the students enrolled in
346 the Massachusetts Virtual Academy shall be from the Greenfield school district.

347 SECTION 7. The board of elementary and secondary education shall establish a digital
348 learning advisory council to advise the commissioner of elementary and secondary education
349 regarding virtual schools, supplemental online courses, education technology and other matters

350 related to virtual education, including, but not limited to, recommendations for best practices to
351 encourage online education to complement classroom instruction in district schools and
352 recommendations on the appropriateness of the fee that the department may retain for the
353 administration of the virtual school program. The members of the council shall serve without
354 compensation but may be reimbursed, subject to appropriation, for expenses necessarily and
355 reasonably incurred in the performance of the member's responsibilities. The council shall
356 consist of 15 members who shall be recommended by the commissioner of elementary and
357 secondary education and appointed by the board of elementary and secondary education and who
358 shall not, by virtue of their membership, be deemed state employees under chapter 268A of the
359 General Laws. One member shall be a representative of the American Federation of Teachers
360 Massachusetts, 1 member shall be a representative of the Massachusetts Teachers Association, 1
361 member shall be a representative of the Massachusetts Association of School Superintendents, 1
362 member shall be a representative of the Massachusetts Association of School Committees, 1
363 member shall be a representative of a non-profit organization that conducts research and training
364 related to online education, 1 member shall be a representative of an institution of higher
365 education that provides online education for students in any grades from kindergarten to grade
366 12, inclusive, 1 member shall be a parent of a student who attends a commonwealth virtual
367 school full-time, 1 member shall be a representative of the Massachusetts secondary school
368 administrators and 1 member shall be a representative of the VHS Collaborative. Members shall
369 be appointed for a term of 3 years. No member shall serve for more than 2 consecutive terms.
370 The members serving on the council may be school committee members, school superintendents,
371 professional educators, parents, students or individuals with expertise in virtual education. A
372 reasonable balance of members representing business, labor, civic, educational, parental and

373 professional groups shall be maintained. Members serving on the council shall represent a
374 reasonable statewide geographic balance. The council shall meet not less than twice each year.

375 The commissioner, with the approval of the board, shall appoint the chair of the council.
376 The commissioner or a designee shall serve as the secretary to the council.

377 SECTION 8. The board of elementary and secondary education shall select not more than
378 3 commonwealth virtual schools for the 2013-2016 school years, not more than 3 additional
379 commonwealth virtual schools for the 2016-2019 school years and not more than 4 additional
380 commonwealth virtual schools for the 2019-2020 school year; provided, that only school districts
381 and education collaboratives shall be eligible to apply for certificates of organization to operate
382 through the 2013-2019 school years; provided, further, that a commonwealth virtual school
383 operated by a single school district, under an agreement entered into by more than 1 school
384 district or by an education collaborative shall not be counted towards the limits in this section if
385 the commonwealth virtual school only enrolls students who reside in the school district, in the
386 school districts that signed the agreement or in the school districts that are members of the
387 education collaborative.

388 SECTION 9. The commissioner of elementary and secondary education shall publish a
389 list of online courses which are aligned with state academic standards that school districts may
390 use on the department's website not later than June 30, 2014.

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