

HOUSE No. 01090

The Commonwealth of Massachusetts

PRESENTED BY:

Martha M. Walz

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying bill:

An Act relative to virtual charter schools.

PETITION OF:

NAME:

DISTRICT/ADDRESS:

Martha M. Walz

8th Suffolk

William N. Brownsberger

24th Middlesex

HOUSE No. 01090

By Ms. Marty Walz of Boston, petition (accompanied by bill, House, No. 01090) of William N. Brownsberger and Marty Walz relative to the definition of virtual charter schools using the Internet for on-line educational course instructions from remote locations. Joint Committee on Education.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to virtual charter schools.

Whereas, the deferred operation of this act would tend to defeat its purpose, which is forthwith to provide expanded learning opportunities for students, 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 Chapter 71 of the General Laws is hereby amended by inserting after section 89 the following
- 2 section:-
- 3 Section 89A. (a) As used in this section the following words shall, unless the context clearly
- 4 requires otherwise, have the following meanings:--
- 5 "Board", the board of elementary and secondary education.
- 6 "Commissioner", the commissioner of elementary and secondary education.

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

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

10 "Online course", a course or grade-level instruction that is delivered by an online provider
11 primarily electronically using the Internet or other computer-based methods and is taught by a
12 teacher primarily from a remote location, with student access to the teacher given synchronously,
13 asynchronously or both; an online course may be delivered to students at school as part of the
14 regularly scheduled school day.

15 "Virtual charter school", a public school operated by an online provider whose teachers teach
16 primarily from a remote location using the Internet or other computer-based methods, with
17 students not required to be located at a physical premises of the school.

18 (b) The purposes of establishing virtual charter schools include all of the purposes contained in
19 subsection (b), section 89, and the following: (i) to provide students with a flexible schedule; (ii)
20 to differentiate the delivery of curriculum and instruction to students; (iii) to meet instructional
21 needs in a cost-effective way; (iv) to provide opportunities for students who need expanded
22 access to courses in order to meet their educational goals, such as students in urban and rural
23 high schools who do not have access to higher level courses; and (v) to provide instruction to
24 students who may not be able to attend traditional public schools.

25 (c) A virtual charter school shall be a public school, operated under a charter granted by the
26 board, which operates independently of a school committee and is managed by a board of
27 trustees. The board of trustees of a virtual charter school, upon receiving a charter from the

28 board, shall be deemed to be public agents authorized by the commonwealth to supervise and
29 control the virtual charter school.

30 (d) Persons or entities eligible to submit an application to establish a virtual charter school shall
31 include, but not be limited to: (i) a non-profit business or corporate entity; (ii) 2 or more certified
32 teachers; or (iii) 10 or more parents; provided, however, that for profit business or corporate
33 entities shall be prohibited from applying for a charter. The application may be filed in
34 conjunction with a college, university, museum or other similar non-profit entity. Private and
35 parochial schools shall not be eligible for virtual charter school status. The board may authorize a
36 single board of trustees to manage more than 1 virtual charter school; provided, however, that
37 each school is issued its own charter.

38 (e) The board shall establish the information needed in an application for the approval of a
39 virtual charter school; provided that the application shall include, but not be limited to, a
40 description of:

41 (i) the mission, purpose, innovation and specialized focus of the proposed virtual charter school;

42 (ii) the innovative methods to be used in the virtual charter school;

43 (iii) the organization of the school by ages of students or grades to be taught and an estimate of
44 the total enrollment of the school;

45 (iv) the method for and timetable of admission to the virtual charter school;

46 (v) the educational program, instructional methodology and services to be offered to students;

47 (vi) the school's capacity to address the particular needs of limited English-proficient students to
48 learn English and learn content matter, including the employment of staff that meets the criteria
49 established by the department;

50 (vii) how the school shall involve parents as partners in the education of their children;

51 (viii) the school governance and by-laws;

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

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

55 (xi) the financial plan for the operation of the school;

56 (xii) methods to assure that all students will have access to necessary technology and materials;

57 (xiii) the number and qualifications of teachers and administrators to be employed, including the
58 number and qualifications of teachers or administrators to be employed who are not licensed in
59 Massachusetts;

60 (xiv) the procedures for evaluation and professional development for teachers and
61 administrators;

62 (xv) a statement of equal educational opportunity which shall state that virtual charter schools
63 shall be open to all students, on a space available basis, and shall not discriminate on the basis of
64 race, color, national origin, creed, sex, ethnicity, sexual orientation, mental or physical disability,
65 age, ancestry, athletic performance, special need, or proficiency in the English language;

66 (xvi) plans for disseminating successes and innovations of the virtual charter school to other non-
67 charter public schools;

68 (xvii) whether the virtual charter school will offer online courses to students attending other
69 schools, and, if so, how the virtual charter school will work with the sending district or school to
70 determine whether the online courses meet said district's or school's standards and requirements
71 and what the virtual charter school will charge for online courses;

72 (xviii) the expectations for teacher-student communication;

73 (xix) how the school will administer state required assessment tests;

74 (xx) how the school will define and monitor a student's participation;

75 (xxi) what, if any, on-site activities, learning, or interaction will be provided or offered; and

76 (xxii) the proposed school year.

77 (f) An application submitted for the establishment of a virtual charter school shall: (i) be
78 submitted to the board for approval under this section and (ii) be made available to the public.
79 All information submitted to the board by a virtual charter school applicant shall be immediately
80 made available by the board to members of the public without a request pursuant to section 10 of
81 chapter 66. Before final approval to establish a virtual charter school, the board shall hold a
82 public hearing on the application at an appropriate location determined by the department. At
83 least 1 member of the board shall attend the public hearing. A comprehensive written summary
84 of all materials prepared by the department or its administrative subdivisions regarding a virtual
85 charter application shall be delivered to the members of the board and the applicant not later than
86 10 working days before any board vote on the charter application. Any report prepared by the

87 department or its administrative subdivisions regarding a charter application shall be delivered to
88 the members of the board and the applicant within 10 days of the completion of said report.

89 All material in support of, or in opposition to, the school submitted to the department or the
90 board shall be made available to the applicant and to the public at least 10 working days before a
91 vote by the board on a virtual charter school application. There shall be a 10 working day freeze
92 on any new material to be made available to the board prior to the day of the board vote on a
93 virtual charter school application.

94 (g) Not more than 5 virtual charter schools shall be allowed to operate in the commonwealth at
95 any time. The 5 virtual charter schools shall not count towards the number of charter schools
96 allowed under subsection (i) of section 89. Applications to establish a virtual charter school
97 shall be submitted to the board annually by November 15. The board shall review the
98 applications and grant new charters in February of the following year.

99 (h) The board shall make the final determination on granting virtual charter school status and
100 may condition charters on the applicant's taking certain actions or maintaining certain conditions.
101 The board shall create and use a rubric for the approval of a virtual charter school application.
102 The board shall publicly review each virtual charter school application against the rubric at each
103 stage in the application process.

104 If a final application is deemed inadequate by the department, the department may provide
105 feedback to the applicant and invite it to submit a stronger application subsequently. Once a final
106 application has been filed, only minor, non-substantive amendments shall be allowed. The
107 department shall maintain a written detailed summary of interviews it conducts with final virtual

108 charter applicants and include that summary with the final application materials that are provided
109 to the board and the public.

110 (i) A virtual charter school established under a charter granted by the board shall be a body
111 politic and corporate with all powers necessary or desirable for carrying out its virtual charter
112 program, including, but not limited to, the power to:

113 (1) adopt a name and corporate seal; provided that any name selected must include the words
114 "virtual charter school";

115 (2) sue and be sued, but only to the same extent and upon the same conditions that a
116 municipality can be sued;

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

119 (4) receive and disburse funds for school purposes;

120 (5) make contracts and leases for the procurement of services, equipment and supplies;

121 provided, however, that if the virtual charter school intends to procure substantially all
122 educational services under contract with another person, the terms of such a contract must be
123 approved by the board either as part of the original charter or by way of an amendment thereto;
124 provided, further that the board shall not approve any such contract terms, the purpose or effect
125 of which is to avoid the prohibition of this section against charter school status for private and
126 parochial schools; and provided further, that a virtual charter school shall not be subject to
127 chapter 30B for the purpose of contracting with another person that shall manage or operate the
128 school;

129 (6) incur temporary debt in anticipation of receipt of funds; provided that, notwithstanding any
130 general or special law to the contrary, the terms of repayment of any virtual charter school's debt
131 shall not exceed the duration of the school's charter without the approval of the board;

132 (7) solicit and accept grants or gifts for school purposes; and

133 (8) have such other powers available to a business corporation formed under chapter 156B that
134 are not inconsistent with this chapter.

135 (j) Virtual charter schools shall not charge a public school for the use or replication of a part of
136 their curriculum subject to the prescriptions of a contract between the virtual charter schools and
137 any third party providers, provided, however, that virtual charter schools may offer online
138 courses to students enrolled in other public schools and charge tuition for such courses.

139 (k) Virtual charter schools shall be open to all students, on a space available basis, and shall not
140 discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual orientation,
141 mental or physical disability, age, ancestry, athletic performance, special need, or proficiency in
142 the English language or a foreign language. Virtual charter schools may limit enrollment to
143 specific grade levels and may structure curriculum around particular areas of focus such as
144 mathematics, science or the arts. There shall be no application fee for admission to a virtual
145 charter school. There shall be no tuition charge for students attending virtual charter schools,
146 except as provided in subsection (j).

147 (l) If the total number of students who are eligible to attend and apply to a virtual charter school
148 and who are siblings of students already attending said virtual charter school is greater than the
149 number of spaces available, an admissions lottery, including all eligible students applying, shall
150 be held to fill all of the spaces in that school from among the students. When a student stops

151 attending a virtual charter school for any reason, the virtual charter school shall fill the vacancy
152 with the next available student on the waitlist for the grade in which the vacancy occurs and shall
153 continue through the waitlist until a student fills the vacant seat. Within 30 days of a vacancy
154 being filled, the virtual charter school shall send the name of the student filling such vacancy to
155 the department for the purposes of the department updating its waitlist.

156 The names of students who entered the lottery but did not gain admission shall be maintained on
157 a waitlist, which shall be forwarded to the department not later than June 1 in the year in which
158 the lottery is held. In addition to the names of students, the school shall supply to the department
159 each student's home address, telephone number, grade level and other information the
160 department deems necessary. The department shall maintain a consolidated waitlist for each
161 municipality in order to determine the number of individual students in each municipality
162 seeking admission to virtual charter schools.

163 (m) Each virtual charter school shall annually, not later than July 1, notify each public school
164 district in writing of the number and grade levels of students who will be attending the virtual
165 charter school from that district the following September as well as the number of new students
166 who will be transferring from that district to the virtual charter school in the following
167 September. Tuition for virtual charter school students shall only be paid for the number of
168 students for whom notification has been reported by July 1. Tuition for virtual charter school
169 students shall be paid only for students actually enrolled in the school.

170 (n) A student may withdraw from a virtual charter school at any time and enroll in another public
171 school where the student resides.

172 A student may be expelled from a virtual charter school based on criteria determined by the
173 board of trustees, and approved by the board, with the advice of the principal and teachers;
174 provided, however, that virtual charter school policies shall be consistent with sections 37H and
175 37H1/2.

176 (o) A virtual charter school shall operate in accordance with its charter and the provisions of law
177 regulating other public schools; provided, however, that sections 41 and 42 shall not apply to
178 employees of virtual charter schools, and provided, further, that section 1G of chapter 69 shall
179 not apply to virtual charter schools. Virtual charter schools shall comply with chapters 71A and
180 71B; provided, however, that the fiscal responsibility of a special needs student currently
181 enrolled in or determined to require a private day or residential school shall remain with the
182 school district where the student resides. If a virtual charter school expects that a special needs
183 student currently enrolled in the virtual charter school may be in need of the services of a private
184 day or residential school, it shall convene an individual education plan team meeting for the
185 student. Notice of the team meeting shall be provided to the special education department of the
186 school district in which the child resides at least 5 days in advance. Personnel from the school
187 district in which the child resides shall be allowed to participate in the team meeting concerning
188 future placement of the child.

189 (p) Notwithstanding this section or any other general or special law to the contrary, for the
190 purposes of chapter 268A: (i) a virtual charter school shall be deemed to be a state agency; and
191 (ii) the appointing official of a member of the board of trustees of a virtual charter school shall be
192 deemed to be the commissioner. Members of boards of trustees of virtual charter schools
193 operating under this section shall file a disclosure annually with the state ethics commission and
194 the department. The disclosure is in addition to the requirements of said chapter 268A and a

195 member of a board of trustees must also comply with the disclosure and other requirements of
196 said chapter 268A. The form of the disclosure shall be prescribed by the ethics commission and
197 shall be signed under penalty of perjury. Such form shall be limited to a statement in which
198 members of the board of trustees shall disclose any financial interest that they or a member of
199 their immediate families, as defined in section 1 of said chapter 268A, have in any virtual charter
200 school located in the commonwealth or in another state or with a person doing business with a
201 virtual charter school.

202 Each member of a board of trustees of a virtual charter school shall file such disclosure for the
203 preceding calendar year with the commission within 30 days of becoming a member of the board
204 of trustees, by September 1 of each year thereafter that the person is a member of the board and
205 by September 1 of the year after the person ceases to be a member of the board; provided,
206 however, that no member of a board of trustees shall be required to file a disclosure for the year
207 in which he ceases to be a member of the board if he served less than 30 days in that year.

208 (q) Students in virtual charter schools shall be required to meet the same performance standards,
209 testing and portfolio requirements set by the board for students in other public schools.

210 (r) The board of trustees, in consultation with the teachers, shall determine the school's
211 curriculum and develop the school's annual budget.

212 (s) Employees of virtual charter schools shall be considered public employees for purposes of
213 tort liability under chapter 258 and for collective bargaining purposes under chapter 150E. The
214 board of trustees shall be considered the public employer for purposes of tort liability under said
215 chapter 258 and for collective bargaining purposes under said chapter 150E. Teachers employed

216 by a virtual charter school shall be subject to the state teacher retirement system under chapter 32
217 and service in a virtual charter school shall be creditable service within the meaning thereof.

218 A virtual charter school shall recognize an employee organization designated by the
219 authorization cards of 50 per cent of its employees in the appropriate bargaining unit as the
220 exclusive representative of all the employees in such unit for the purpose of collective
221 bargaining.

222 (t) Each local school district shall be required to grant a leave of absence to any teacher in the
223 public schools system requesting such leave to teach in a virtual charter school. A teacher may
224 request a leave of absence for up to 2 years.

225 At the end of the second year, the teacher may either return to his former teaching position or, if
226 he chooses to continue teaching at the virtual charter school, resign from his school district
227 position.

228 (u) Notwithstanding section 59C, the internal form of governance of a virtual charter school shall
229 be determined by the school's charter.

230 (v) A virtual charter school shall comply with all applicable state and federal health and safety
231 laws and regulations.

232 (w) A virtual charter granted by the board shall be for 5 years. The board shall develop
233 procedures and guidelines for revocation and renewal of a school's charter.

234 When deciding on charter renewal, the board shall consider progress made in student academic
235 achievement and whether the school has met its obligations and commitments under the charter.

236 When deciding on charter renewal, the board shall take into account the annual attrition of
237 students, teachers, and administrators.

238 (x) The board may revoke a school's charter if the school has not fulfilled any conditions
239 imposed by the board in connection with the grant of the charter or the school has violated any
240 provision of its charter. The board may place conditions on a charter or may place a virtual
241 charter school on a probationary status to allow the implementation of a remedial plan after
242 which, if said plan is unsuccessful, the charter may be summarily revoked.

243 (y) Virtual charter schools shall be funded pursuant to the school choice formula as described in
244 section 12B of chapter 76, provided, however, that for special education students the tuition
245 amount shall remain the expense per student for such type of education as is required by such
246 non-resident student.

247 If more than 1 virtual charter school is managed by a single network or board of trustees, funding
248 shall not be transferred among individual schools within the network.

249 (z) If the unencumbered amount of cumulative surplus revenue from tuition held by a virtual
250 charter school at the end of a fiscal year, less (i) the amount of the fourth quarter tuition payment
251 and (ii) any reserve funds held as security for bank loans, exceeds 20 per cent of its operating
252 budget, the amount in excess of said 20 per cent shall be returned by the virtual charter school to
253 the sending district or districts and the state in proportion to their share of tuition paid during the
254 fiscal year. At the end of each fiscal year, the commissioner shall certify the amounts described
255 above and the amount, if any, by which it exceeds 20 per cent of the school's operating budget,
256 and shall report such amount to the school committee of the sending district or districts and the

257 applicable board of selectmen or city council by December 1 of each year. A virtual charter
258 school shall annually make any payment required by this subsection no later than December 31.

259 (aa) Each virtual charter school shall submit an annual report, no later than August 1, to the
260 board, each parent or guardian of its enrolled students and each parent or guardian contemplating
261 enrollment in that virtual charter school. The annual report shall be in such form as may be
262 prescribed by the board and shall include, but not be limited to: (i) discussion of progress made
263 toward the achievement of the goals set forth in the charter; (ii) an accounting of how many
264 students were designated as requiring special education services or English language services by
265 language proficiency level as measured by the Massachusetts English Proficiency Assessment
266 examination or its successor upon enrollment and how many of these students were subsequently
267 no longer designated as such, along with a description of methods used by the school to achieve
268 these outcomes and the rationale behind the methodologies used; (iii) the number of students,
269 teachers, and administrators who have left the virtual charter school and their reasons for
270 leaving; (iv) the number of students enrolled in the virtual charter school eligible for free lunch
271 as defined in section 2 of chapter 70; (v) the number of students enrolled in the virtual charter
272 school eligible for reduced price lunch as defined in section 2 of chapter 70; (vi) the number of
273 homeless students enrolled in the virtual charter school; (vii) the number of students in the care
274 of the Department of Youth Services enrolled in the charter school; and (viii) a financial
275 statement setting forth by appropriate categories the revenue and expenditures for the year just
276 ended and a balance sheet setting forth the virtual charter school's assets, liabilities and fund
277 balances or equities.

278 The department shall promulgate regulations creating a reporting requirement for a virtual
279 charter school's net asset balance at the end of the fiscal year; provided, however, that said

280 regulations shall require, without limitation, the following: the revenue and expenditures for the
281 year just ended with a specific accounting of the uses of public and private dollars; compensation
282 and benefits for teachers, staff, administrators, executives, and board of trustees; the amount of
283 any and all funds transferred to a management company; the sources of any surplus funds,
284 specifically whether they are private or public; how any surplus funds were used in the previous
285 fiscal year; and the planned use of any surplus funds in the upcoming fiscal year and in future
286 fiscal years.

287 Each virtual charter school shall keep an accurate account of all its activities and all its receipts
288 and expenditures and shall annually cause an independent audit to be made of its accounts. Such
289 audit shall be filed annually on or before January 1 with the department and the state auditor and
290 shall be in a form prescribed by the state auditor. The state auditor may investigate the budget
291 and finances of virtual charter schools and their financial dealings, transactions and relationships,
292 and shall have the power to examine the records of virtual charter schools and to prescribe
293 methods of accounting and the rendering of periodic reports.

294 (bb) The commissioner shall collect data on the racial, ethnic and socio-economic make-up of
295 the student enrollment of each virtual charter school. The commissioner shall also collect data on
296 the number of students enrolled in each virtual charter school who have individual education
297 plans pursuant to chapter 71B and those requiring English language learners programs under
298 chapter 71A. The commissioner shall file said data annually with the clerks of the house and
299 senate and the joint committee on education not later than December 1.

300 (cc) Individuals or groups may complain to a virtual charter school's board of trustees concerning
301 any claimed violations of the provisions of this section by the school. If, after presenting their

302 complaint to the trustees, the individuals or groups believe their complaint has not been
303 adequately addressed, they may submit their complaint to the board which shall investigate such
304 complaint and make a formal response.

305 (dd) The board shall promulgate regulations for implementation and enforcement of this section.