HOUSE DOCKET, NO. 1302 FILED ON: 1/20/2011

HOUSE . . . . . No. 1090

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:

An Act relative to virtual charter schools.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Martha M. Walz	*8th Suffolk*
William N. Brownsberger	
	☐ *[District]*
	☐

HOUSE DOCKET, NO. 1302 FILED ON: 1/20/2011

HOUSE . . . . . No. 1090

By Ms. Walz of Boston, a petition (accompanied by bill, House, No. 1090) of Martha M. Walz and William N. Brownsberger relative to the definition of virtual charter schools using the Internet for on-line educational course instructions from remote locations. [COMMITTEE].

The Commonwealth of Massachusetts

An Act relative to virtual charter schools.

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

Chapter 71 of the General Laws is hereby amended by inserting after section 89 the following section:-

Section 89A. (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.

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

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

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

15 "Virtual charter school", a public school operated by an online provider whose teachers
16 teach 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
19 contained in subsection (b), section 89, and the following: (i) to provide students with a flexible
20 schedule; (ii) to differentiate the delivery of curriculum and instruction to students; (iii) to meet
21 instructional needs in a cost-effective way; (iv) to provide opportunities for students who need
22 expanded access to courses in order to meet their educational goals, such as students in urban
23 and rural high schools who do not have access to higher level courses; and (v) to provide
24 instruction to 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
26 the 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
31 school shall include, but not be limited to: (i) a non-profit business or corporate entity; (ii) 2 or
32 more certified teachers; or (iii) 10 or more parents; provided, however, that for profit business or
33 corporate 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
39 a 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
42 school;

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

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

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

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

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

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

(viii) the school governance and by-laws;

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

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

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

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

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

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

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

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

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

(xviii) the expectations for teacher-student communication;

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

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

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

82 (xxii) the proposed school year.

83 (f) An application submitted for the establishment of a virtual charter school shall: (i) be
84 submitted to the board for approval under this section and (ii) be made available to the public.
85 All information submitted to the board by a virtual charter school applicant shall be immediately
86 made available by the board to members of the public without a request pursuant to section 10 of
87 chapter 66. Before final approval to establish a virtual charter school, the board shall hold a
88 public hearing on the application at an appropriate location determined by the department. At
89 least 1 member of the board shall attend the public hearing. A comprehensive written summary
90 of all materials prepared by the department or its administrative subdivisions regarding a virtual
91 charter application shall be delivered to the members of the board and the applicant not later than
92 10 working days before any board vote on the charter application. Any report prepared by the
93 department or its administrative subdivisions regarding a charter application shall be delivered to
94 the members of the board and the applicant within 10 days of the completion of said report.

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

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

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

110 If a final application is deemed inadequate by the department, the department may
111 provide feedback to the applicant and invite it to submit a stronger application subsequently.
112 Once a final application has been filed, only minor, non-substantive amendments shall be
113 allowed. The department shall maintain a written detailed summary of interviews it conducts
114 with final virtual charter applicants and include that summary with the final application materials
115 that are provided to the board and the public.

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

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

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

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

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

126 (5) make contracts and leases for the procurement of services, equipment and supplies;
127 provided, however, that if the virtual charter school intends to procure substantially all
128 educational services under contract with another person, the terms of such a contract must be
129 approved by the board either as part of the original charter or by way of an amendment thereto;
130 provided, further that the board shall not approve any such contract terms, the purpose or effect
131 of which is to avoid the prohibition of this section against charter school status for private and
132 parochial schools; and provided further, that a virtual charter school shall not be subject to
133 chapter 30B for the purpose of contracting with another person that shall manage or operate the
134 school;

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

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

140 (8) have such other powers available to a business corporation formed under chapter
141 156B that are not inconsistent with this chapter.

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

146 (k) Virtual charter schools shall be open to all students, on a space available basis, and
147 shall not discriminate on the basis of race, color, national origin, creed, sex, ethnicity, sexual
148 orientation, mental or physical disability, age, ancestry, athletic performance, special need, or
149 proficiency in the English language or a foreign language. Virtual charter schools may limit

150 enrollment to specific grade levels and may structure curriculum around particular areas of focus
151 such as mathematics, science or the arts. There shall be no application fee for admission to a
152 virtual charter school. There shall be no tuition charge for students attending virtual charter
153 schools, except as provided in subsection (j).

154 (l) If the total number of students who are eligible to attend and apply to a virtual charter
155 school and who are siblings of students already attending said virtual charter school is greater
156 than the number of spaces available, an admissions lottery, including all eligible students
157 applying, shall be held to fill all of the spaces in that school from among the students. When a
158 student stops attending a virtual charter school for any reason, the virtual charter school shall fill
159 the vacancy with the next available student on the waitlist for the grade in which the vacancy
160 occurs and shall continue through the waitlist until a student fills the vacant seat. Within 30 days
161 of a vacancy being filled, the virtual charter school shall send the name of the student filling such
162 vacancy to the department for the purposes of the department updating its waitlist.

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

170 (m) Each virtual charter school shall annually, not later than July 1, notify each public
171 school district in writing of the number and grade levels of students who will be attending the
172 virtual charter school from that district the following September as well as the number of new
173 students who will be transferring from that district to the virtual charter school in the following
174 September. Tuition for virtual charter school students shall only be paid for the number of
175 students for whom notification has been reported by July 1. Tuition for virtual charter school
176 students shall be paid only for students actually enrolled in the school.

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

179 A student may be expelled from a virtual charter school based on criteria determined by
180 the board of trustees, and approved by the board, with the advice of the principal and teachers;
181 provided, however, that virtual charter school policies shall be consistent with sections 37H and
182 37H1/2.

183 (o) A virtual charter school shall operate in accordance with its charter and the provisions
184 of law regulating other public schools; provided, however, that sections 41 and 42 shall not apply
185 to employees of virtual charter schools, and provided, further, that section 1G of chapter 69 shall
186 not apply to virtual charter schools. Virtual charter schools shall comply with chapters 71A and

187 71B; provided, however, that the fiscal responsibility of a special needs student currently
188 enrolled in or determined to require a private day or residential school shall remain with the
189 school district where the student resides. If a virtual charter school expects that a special needs
190 student currently enrolled in the virtual charter school may be in need of the services of a private
191 day or residential school, it shall convene an individual education plan team meeting for the
192 student. Notice of the team meeting shall be provided to the special education department of the
193 school district in which the child resides at least 5 days in advance. Personnel from the school
194 district in which the child resides shall be allowed to participate in the team meeting concerning
195 future placement of the child.

196 (p) Notwithstanding this section or any other general or special law to the contrary, for
197 the purposes of chapter 268A: (i) a virtual charter school shall be deemed to be a state agency;
198 and (ii) the appointing official of a member of the board of trustees of a virtual charter school
199 shall be deemed to be the commissioner. Members of boards of trustees of virtual charter schools
200 operating under this section shall file a disclosure annually with the state ethics commission and
201 the department. The disclosure is in addition to the requirements of said chapter 268A and a
202 member of a board of trustees must also comply with the disclosure and other requirements of
203 said chapter 268A. The form of the disclosure shall be prescribed by the ethics commission and
204 shall be signed under penalty of perjury. Such form shall be limited to a statement in which
205 members of the board of trustees shall disclose any financial interest that they or a member of
206 their immediate families, as defined in section 1 of said chapter 268A, have in any virtual charter
207 school located in the commonwealth or in another state or with a person doing business with a
208 virtual charter school.

209 Each member of a board of trustees of a virtual charter school shall file such disclosure
210 for the preceding calendar year with the commission within 30 days of becoming a member of
211 the board of trustees, by September 1 of each year thereafter that the person is a member of the
212 board and by September 1 of the year after the person ceases to be a member of the board;
213 provided, however, that no member of a board of trustees shall be required to file a disclosure for
214 the year in which he ceases to be a member of the board if he served less than 30 days in that
215 year.

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

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

220 (s) Employees of virtual charter schools shall be considered public employees for
221 purposes of tort liability under chapter 258 and for collective bargaining purposes under chapter
222 150E. The board of trustees shall be considered the public employer for purposes of tort liability
223 under said chapter 258 and for collective bargaining purposes under said chapter 150E. Teachers

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

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

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

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

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

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

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

243 When deciding on charter renewal, the board shall consider progress made in student
244 academic achievement and whether the school has met its obligations and commitments under
245 the charter. When deciding on charter renewal, the board shall take into account the annual
246 attrition of students, teachers, and administrators.

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

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

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

258 (z) If the unencumbered amount of cumulative surplus revenue from tuition held by a
259 virtual charter school at the end of a fiscal year, less (i) the amount of the fourth quarter tuition
260 payment and (ii) any reserve funds held as security for bank loans, exceeds 20 per cent of its
261 operating budget, the amount in excess of said 20 per cent shall be returned by the virtual charter
262 school to the sending district or districts and the state in proportion to their share of tuition paid
263 during the fiscal year. At the end of each fiscal year, the commissioner shall certify the amounts
264 described above and the amount, if any, by which it exceeds 20 per cent of the school's operating
265 budget, and shall report such amount to the school committee of the sending district or districts
266 and the applicable board of selectmen or city council by December 1 of each year. A virtual
267 charter school shall annually make any payment required by this subsection no later than
268 December 31.

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

288 The department shall promulgate regulations creating a reporting requirement for a
289 virtual charter school's net asset balance at the end of the fiscal year; provided, however, that said
290 regulations shall require, without limitation, the following: the revenue and expenditures for the
291 year just ended with a specific accounting of the uses of public and private dollars; compensation
292 and benefits for teachers, staff, administrators, executives, and board of trustees; the amount of
293 any and all funds transferred to a management company; the sources of any surplus funds,
294 specifically whether they are private or public; how any surplus funds were used in the previous
295 fiscal year; and the planned use of any surplus funds in the upcoming fiscal year and in future
296 fiscal years.

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

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

310 (cc) Individuals or groups may complain to a virtual charter school's board of trustees
311 concerning any claimed violations of the provisions of this section by the school. If, after
312 presenting their complaint to the trustees, the individuals or groups believe their complaint has
313 not been adequately addressed, they may submit their complaint to the board which shall
314 investigate such complaint and make a formal response.

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