HOUSE DOCKET, NO. 759 FILED ON: 1/19/2011

HOUSE . . . . . No. 845

The Commonwealth of Massachusetts

PRESENTED BY:

Todd M. Smola

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 the Secretary of State and ethics reform..

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Todd M. Smola	*1st Hampden*

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HOUSE . . . . . No. 845

By Mr. Smola of Palmer, a petition (accompanied by bill, House, No. 845) of Todd M. Smola relative to the powers of the Secretary of the Commonwealth regarding certain ethics laws. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *3978* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to the Secretary of State and ethics reform..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1. Section 41 of chapter 3 OF THE General Laws, as appearing in the 2006 Official Edition, is hereby amended by adding the following 2 paragraphs:-

The state secretary shall adopt regulations pursuant to chapter 30A to carry out the provisions of sections 39 to50, inclusive.

The state secretary shall, upon written request from a person who is or may be subject to sections 39 to 50, inclusive, render advisory opinions on the requirements of those sections. An opinion rendered by the state secretary, until and unless amended or revoked, shall be a defense in a criminal action brought under sections 39 to 50, inclusive, and shall be binding on the state secretary and the attorney general in any subsequent proceedings concerning the person who requested the opinion and who acted in good faith, unless material facts were omitted or misstated by the person in the request for an opinion. Such requests shall be confidential; but the state secretary may publish such opinions if the name of the requesting person and any other identifying information is not included in such publication, unless the requesting person consents to such inclusion.

SECTION 2. Said chapter 3 of the General Laws, as so appearing, is hereby further amended by striking out section 45 and inserting in place thereof the following section:-

17 Section 45. (a) Upon receipt of a sworn complaint signed under pains and penalties of
18 perjury and upon receipt of evidence which is deemed sufficient by the state secretary, the state
19 secretary shall initiate a preliminary inquiry into any alleged violation of sections 39 to 50. Prior
20 to the commencement of a preliminary inquiry into any such alleged violation, the state secretary
21 shall notify the attorney general of such action. All proceedings and records relating to a
22 preliminary inquiry or initial staff review to determine whether to initiate an inquiry shall be
23 confidential, except that the state secretary may provide to: (1) the attorney general, the United
24 States Attorney or a district attorney of competent jurisdiction, evidence which may be used in a
25 criminal proceeding; (2) the inspector general information concerning fraud, waste, or abuse in
26 the expenditure of public funds; (3) the state ethics commission concerning violations of chapters
27 268A and 268B; and (4) the director of the office of campaign and political finance information

28 concerning violations of chapter 55. Any information provided by the state secretary
29 pursuant to this section shall be confidential in accordance with this section and section 4 of
30 chapter 268B, except that such information may be used by the officer or agency to whom it was
31 provided in any investigation or subsequent proceedings. The state secretary shall notify any
32 person who is the subject of the preliminary inquiry of the existence of such inquiry and the
33 general nature of the alleged violation within 30 days of the commencement of the inquiry.

34 (b) If a preliminary inquiry fails to indicate reasonable cause for belief that any provision

35 of sections 39 to 50 of this chapter has been violated, the state secretary shall
36 immediately terminate the inquiry and so notify, in writing, the complainant, if any, and

37 the person who had been the subject of the inquiry.

38 (c) If a preliminary inquiry indicates reasonable cause for belief that any provision of

39 sections 39 to 50 has been violated, the state secretary may

40 initiate an adjudicatory proceeding to determine whether there has been such a violation.

41 (d) The state secretary may require by summons the attendance and testimony of
42 witnesses and the production of books, papers and other records relating to any matter being
43 investigated by it pursuant to this chapter. Such summons may be issued by the state secretary
44 and shall be served in the same manner as summonses for witnesses in civil cases, and all
45 provisions of law relative to summonses issued in such cases, including the compensation of
46 witnesses, shall apply to summonses issued by the state secretary. Such summonses shall have
47 the same force, and be obeyed in the same manner, and under the same penalties in case of
48 default, as if issued by order of a justice of the superior court and may be quashed only upon
49 motion of the summonsed party and by order of a justice of the superior court .

50 (e) The state secretary or his designee may administer oaths and may hear testimony or
51 receive other evidence in any proceeding.

52 (f) All testimony in an adjudicatory proceeding shall be under oath. All parties shall have
53 the right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who
54 testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses
55 shall be given a copy of the regulations governing adjudicatory proceedings. All witnesses shall
56 be entitled to be represented by counsel

57 (g) Any person whose name is mentioned during an adjudicatory proceeding of the state
58 secretary and who may be adversely affected thereby may appear personally before the state
59 secretary on his own behalf, with or without an attorney, to give a statement in opposition to
60 such adverse mention or file a written statement of such opposition for incorporation into the
61 record of the proceeding.

62 (h) All hearings in adjudicatory proceedings of the state secretary carried out pursuant to
63 the provisions of this section shall be public.

64 (i) Within 30 days after completion of deliberations, the state secretary shall publish a
65 written report of his findings and conclusions.

66 (j) Upon a finding pursuant to an adjudicatory proceeding that there has been a violation
67 of this chapter, the state secretary may issue an order:

68 (1) requiring the violator to cease and desist such violation of sections 39 to 50:

69 (2) requiring the violator to file any report, statement or other information as
70 required by sections 39 to 50;

71 (3) suspending for a specified period or revoking the license and registration of
72 the violator; or

73 (4) requiring the violator to pay a civil penalty of not more than $10,000 for each
74 violation of this chapter.

75 The state secretary may file a civil action in superior court to enforce this order.

76 (k) Final action by the state secretary under this section shall be subject to review in
77 superior court upon petition of any party in interest filed within 30 days after the action
78 for which review is sought. The court shall enter a judgment enforcing, modifying, or
79 setting aside the order of the state secretary, or it may remand the proceedings to the state

80 secretary for such further action as the court may direct. If the court modifies or sets aside
81 the state secretary's order or remands the proceedings to the state secretary, the court
82 shall determine whether such modification, set aside, or remand is substantial. If the court
83 does find such modification, set aside, or remand to be substantial, the petitioner shall be
84 entitled to be reimbursed from the treasury of the commonwealth for reasonable
85 attorneys' fees and all court costs incurred by him in the defense of the charges contained
86 in the proceedings. The amount of such reimbursement shall be awarded by the court but
87 shall not exceed $20,000 per person, per case.