HOUSE DOCKET, NO. 1454 FILED ON: 1/16/2013

HOUSE . . . . . No. 2849

The Commonwealth of Massachusetts

PRESENTED BY:

Kevin J. Kuros

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 adoption of the accompanying bill:

An Act relative to controlling the size of government.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Kevin J. Kuros	*8th Worcester*	*1/16/2013*
Bruce E. Tarr	*First Essex and Middlesex*	*1/16/2013*
Keiko M. Orrall	*12th Bristol*	*1/16/2013*
Ryan C. Fattman	*18th Worcester*	*1/16/2013*

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HOUSE . . . . . No. 2849

By Mr. Kuros of Uxbridge, a petition (accompanied by bill, House, No. 2849) of Kevin J. Kuros and others for legislation to establish a sunset commission to periodically review government agencies and authorities. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

An Act relative to controlling the size of government.

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

SECTION 1. The General Laws, as appearing in the 2010 Official Edition, are hereby amended by inserting after chapter 3 the following chapter:-

CHAPTER 3A

THE SUNSET ACT

Section 1. There is hereby established a procedure for the identification and

elimination of waste, duplication and inefficiency in state government agencies and authorities established by statute, regulation or executive order to be known as the Sunset Act.

Section 2. As used in this chapter, the following words shall, unless the context clearly requires otherwise, have the following meanings:

“Advisory committee”, a committee, council, commission or other entity

established under state law whose primary function is to advise a state agency.

“Agency”, a state agency as defined in section 1 of chapter 29.

"Authority", a state authority as defined in section 1 of chapter 29.

“Commission”, the sunset advisory commission established in section 3.

Section 3. (a) There shall be a sunset advisory commission consisting of 3

members of the senate, 1 of whom shall be appointed by the minority leader, 3 members of house of representatives, 1 of whom shall be appointed by the minority leader. The president of the senate and the speaker of the house of representatives may serve as legislative appointees.

(b) Legislative members shall serve 2-year terms, conterminous with their service as elected members of the legislature. If the president of the senate or the speaker of the house of representatives serves on the commission, the president or speaker's service shall continue until resignation from the commission or until the individual ceases to hold the office.

(c) Any member, other than the president of the senate and the speaker of the house of representatives, who serves a full term may not be appointed to an immediately succeeding term.

(d) The president of the senate and the speaker of the house of representatives shall make their appointments before February 1 of each odd-numbered year.

(e) If a legislative member ceases to be a member of the house from which the member was appointed, the seat held by that member shall be considered vacant.

(f) If a vacancy occurs, the appropriate appointing authority shall appoint a person to serve for the remainder of the unexpired term in the same manner as the original appointment.

(g) The commission shall have a chair and a vice-chair as presiding officers. The chair and vice-chair positions shall alternate every 2 years between the 2 membership groups appointed by the president of the senate and the speaker of the house of representatives. The chair and vice-chair shall not be from the same membership group. The president of the senate shall designate a presiding officer from the president's appointed membership group and the speaker shall designate the other presiding officer

from the speaker's appointed membership group.

(h) Four members of the commission shall constitute a quorum. A final action or recommendation shall not be made unless approved by a recorded roll call vote of a majority of members appointed by the president of the senate and the speaker of the house of representatives. All other actions by the commission shall be decided by a majority of the members present and voting, so long as a quorum is present.

Section 4. The commission shall adopt rules necessary to carry out this chapter.

Section 5. Before July 1 of the odd-numbered year before the year in which an agency, advisory committee or authority subject to this chapter is abolished, the agency, advisory committee or authority shall report to the commission:

(1) information regarding the application to the agency, advisory committee or authority of the criteria in section 9; and

(2) any other information that the agency, advisory committee or authority considers appropriate or that the commission requests.

Section 6. (a) Within 1 year of the appointment and qualification of the members of the commission and the organization of the commission staff, the commission shall assign sunset dates for each agency, authority and advisory committee of the commonwealth and shall notify the head of such agency, authority and advisory committee of the date selected. The commission shall then file legislation with the general court to implement the abolition schedule.

(b) Before January 1 of the year in which an agency, advisory committee or authority subject to this chapter is scheduled to be abolished, the commission shall:

(1) review and take action necessary to verify the reports submitted by the agency, advisory committee or authority under this chapter;

(2) consult the house and senate committees on post audit and oversight, the state auditor, the inspector general and the state comptroller on the application to the agency, advisory committee or authority of the criteria in section 9;

(3) conduct a review of the agency, advisory committee or authority based on the criteria in section 9 and prepare a written report; and

(4) review the implementation of commission recommendations contained in the reports presented to the legislature during the preceding legislative session and the resulting legislation.

(c) The written report prepared by the commission under clause (3) of subsection (b) shall be a public record.

Section 7. (a) Before February 1 of the year in which an agency, advisory committee or authority subject to this chapter and is to be abolished, the commission shall conduct public hearings concerning, but not limited to, the application to the agency, advisory committee or authority of the criteria in section 9.

(b) The commission may hold the public hearings after the review of the agency, advisory committee or authority is complete and available to the public.

Section 8. (a) At each regular legislative session, the commission shall present to the legislature and the governor a report on the agencies, authorities and advisory committees reviewed.

(b) In the report the commission shall include:

(1) its findings under section 9;

(2) its recommendations under this chapter; and

(3) other information the commission considers necessary for a complete review of the agency, advisory committee or authority.

Section 9. The commission and its staff shall consider the following criteria in determining whether a public need exists for the continuation of a state agency, authority or advisory committee or for the performance of the functions of the agency, authority or advisory committee:

(1) the efficiency and effectiveness with which the agency, authority or advisory committee operates;

(2) (a) an identification of the mission, goals and objectives intended for the agency, authority or advisory committee and of the problem or need that the agency, authority or advisory committee was intended to address; and

(b) the extent to which the mission, goals and objectives have been achieved and the problem or need has been addressed;

(3) (a) an identification of any activities of the agency, authority or advisory committee in addition to those granted by statute and of the authority, of the agency, authority or advisory to conduct those activities; and

(b) the extent to which those activities are needed;

(4) an assessment of authority of the agency, authority or advisory committee relating to fees, inspections, enforcement and penalties;

(5) whether less restrictive or alternative methods of performing a function that the agency, authority or advisory committee performs could adequately protect or provide service to the public;

(6) the extent to which the jurisdiction of the agency, authority or advisory committee and the programs administered by the agency, authority or advisory committee overlap or duplicate those of other agencies, authorities or advisory committees, the extent to which the agency, authority or advisory committee coordinates with those agencies, authorities

or advisory committees and the extent to which the programs administered by the agency, authority or advisory committee can be consolidated with the

programs of other authorities, agencies or advisory committees;

(7) the promptness and effectiveness with which the agency, authority or advisory committee addresses complaints concerning entities or other persons affected by the agency, authority or advisory committee, including an assessment of the agency's, authority's or advisory committee's administrative hearings process;

(8) an assessment of the agency's, authority's or advisory committee's

rulemaking process and the extent to which the agency, authority or advisory committee has encouraged participation by the public in making its rules and decisions and the extent to which the public participation has resulted in rules that benefit the public;

(9) the extent to which the agency, authority or advisory committee has complied with:

(a) federal and state laws and applicable rules regarding equality of

employment opportunity and the rights and privacy of individuals; and

(b) state law and applicable rules of any state agency, authority or

advisory committee regarding purchasing guidelines and programs for historically underutilized businesses;

(10) the extent to which the agency, authority or advisory committee issues and enforces rules relating to potential conflicts of interest of its employees and chapter 268A;

(11) the extent to which the agency or authority complies with chapters 66 and 66A and follows records management practices that enable the agency to respond efficiently to requests for public information;

(12) the effect of federal intervention or loss of federal funds if the agency,

authority or advisory committee is abolished;

(13) the extent to which the authority has issued bonds or otherwise incurred similar long-term obligations, the amount of outstanding bonded indebtedness for which the authority is responsible and the sustainability of another authority assuming responsibility for such long-term obligations;

(14) whether the authority is responsible for a retirement system for its employees and the extent of the authority's obligations and available funding under such retirement system and for other post-employment benefits for retired employees; and

(15) whether the agency, authority or advisory committee utilizes an open and competitive bid process for third party contracts related to legal representation, bonds and fiscal management.

Section 10. (a) In its report on an agency, authority or advisory committee, the commission shall make recommendations:

(1) on the abolition, continuation or reorganization of each affected

agency, authority or advisory committee and on the need for performance of the functions of the agency, authority or advisory committee;

(2) on the consolidation, transfer or reorganization of programs within

agencies or authorities not under review when the programs duplicate functions performed in agencies or authorities under review;

(3) to improve the operations of the agency, authority or advisory

committee, including management recommendations that do not require a change in the agency's, authority's or advisory committee's enabling statute; and

(4) to improve the efficiency and transparency in third party contract

awards related to legal representation, bonds and fiscal management, including, but not limited to, recommending utilization of an open and competitive bid process.

(b) The commission shall include the estimated fiscal impact of its

recommendations and may recommend appropriation levels for certain programs to improve the operations of the agency, authority or advisory committee, to be forwarded to the house and senate committees on ways and means and the executive office for administration and finance.

(c) The commission shall prepare drafts of legislation necessary to carry out the commission's recommendations under this section.

(d) After the legislature acts on the report, the commission shall present to the secretary of administration and finance, the commission's recommendations that do not require a statutory change to be put into effect.

Section 11. In the 2-year period preceding the date scheduled for the abolition of a state agency, authority or advisory committee under this chapter, the commission may exempt certain agencies, authorities or advisory committees from the requirements of this chapter relating to staff reports, hearings and reviews.

(a) The commission may only exempt an agency, authority or advisory committee that has been (i) inactive for a period of 2 years preceding the date the agency, authority or advisory committee is scheduled for abolition or (ii) rendered inactive by an action of the legislature.

(b) The commission's action in exempting an agency, authority or advisory

committee under this section shall be done by an affirmative record vote and shall be decided by a majority of all members present and voting.

Section 12. During each legislative session, the staff of the commission shall

monitor legislation affecting agencies, authorities and advisory committees that have undergone sunset review and shall periodically report to the members of the commission on proposed changes which would modify prior recommendations of the commission.

Section 13. An advisory committee, the primary function of which is to advise a particular agency or authority, shall be abolished on the date set for abolition of the agency or authority unless the advisory committee shall have been expressly continued by law.

Section 14. (a) During the annual session immediately before the abolition of an agency, authority or an advisory committee that is subject to this chapter, the legislature may continue the agency, authority or advisory committee for a period not to exceed 12 years.

(b) This chapter shall not prohibit the legislature from:

(1) terminating a state agency, authority or advisory committee subject to

this chapter at a date earlier than that provided in this chapter; or

(2) considering other legislation relative to a state agency, authority or

advisory committee subject to this chapter.

Section 15. (a) An agency, authority or advisory committee that is abolished in an odd-numbered year may continue in existence until June 30 of the following year to conclude its business. Unless the law provides otherwise, abolition shall not reduce or otherwise limit the powers and authority of the agency or authority during the concluding year. An agency or authority shall be terminated and shall cease all activities at the expiration of the 1-year period. Unless the law provides otherwise, all rules that have been adopted by the agency or authority shall expire at the expiration of the 1-year

period.

(b) An un-obligated or unexpended appropriation of an abolished agency or

advisory committee shall lapse on September 1 of the year after abolition.

(c) Except as provided by subsection (f) or as otherwise provided by law, all

money in a dedicated fund of an abolished state agency, authority or advisory committee on September 1 of the year after abolition shall be transferred to the General Fund. Any law dedicating money to a specific fund of an abolished agency shall become void on September 1 of the year after abolition.

(d) Unless otherwise provided, an abolished state agency, authority or advisory committee funded by the legislature may not spend or obligate any of the money appropriated beyond 1 year from the date of abolition.

(e) Unless the governor designates an appropriate agency as prescribed by

subsection (f), property and records in the custody of an abolished state agency, authority or advisory committee on September 1 of the year after abolition shall be transferred to the state archives. If the governor designates an appropriate agency, the property and records shall be transferred to the designated agency.

(f) This chapter shall not impair or impede the payment of bonded indebtedness and all other obligations, including lease, contract and other written obligations, under their terms. If an abolished agency or authority has outstanding bonded indebtedness or other outstanding obligations, including lease, contract or other written obligations, the bonds and all other obligations, including lease, contract and other written obligations shall remain valid and enforceable under their terms and subject to all applicable terms and conditions of the laws and proceedings authorizing the bonds and all other obligations, including lease, contract and other written obligations. The governor shall designate an appropriate agency or authority that shall continue to carry out all covenants contained in the bonds and in all other obligations, including lease, contract and other written obligations, to complete the construction of projects or the performance of other

obligations, including lease, contract and other written obligations. The designated agency or authority shall provide payment from the sources of payment of the bond under the terms of the bonds and shall provide payment from the sources of payment of all other obligations, including lease, contract and other written obligations, under their terms, whether from taxes, revenues or otherwise, until the bonds and interest on the

bonds are paid in full and all other obligations, including lease, contract and other written obligations, are performed and paid in full. If the proceedings so provide, all funds established by laws or proceedings authorizing the bonds or authorizing other obligations, including lease, contract and other written obligations, shall remain with the comptroller or the previously designated trustees. If the proceedings do not provide that the funds

remain with the comptroller or the previously designated trustees, the funds shall be transferred to the designated agency or authority.

Section 16. (a) The commission may issue a subpoena to compel the attendance of witnesses and the production of books, records, papers and other objects necessary or proper for the purposes of the commission proceedings. The subpoena may be served on a witness at any place in the commonwealth.

(b) If a majority of the commission directs the issuance of a subpoena, the

chairman shall issue the subpoena in the name of the commission.

(c) If the chairman is absent, the chairman's designee may issue a subpoena or other process in the same manner as the chairman.

(d) If necessary to obtain compliance with a subpoena or other process, the

commission may issue attachments. The attachments may be addressed to and served by a constable, sheriff or deputy sheriff in the commonwealth.

(e) Testimony taken under subpoena shall be reduced to writing and given under oath subject to the penalties of perjury.

(f) A witness who attends a commission proceeding under process shall be paid the same fees and mileage paid witnesses in courts of the commonwealth.

Section 17. (a) The commission may request the assistance of agencies. When assistance is requested, an agency or an agency officer shall reasonably assist the commission.

(b) In carrying out its functions under this chapter, the commission or its

designated staff member may inspect the records, documents and files of any agency or authority.

Section 18. (a) A working paper, including all documentary or other information, prepared and maintained by the commission staff in performing its duties under this chapter or other law to conduct an evaluation and prepare a report shall be exempt from the public disclosure requirements of chapter 66.

(b) A record held by another entity that is considered to be confidential by law and that the commission receives in connection with the performance of the commission's functions under this chapter or another law remains confidential and shall be exempt from the public disclosure requirements of chapter 66.

Section 19. If an employee is displaced because an agency, authority or advisory committee is abolished, reorganized or continued, the head of the agency, authority or advisory

committee and the personnel administrator of the commonwealth shall make a reasonable effort to relocate the displaced employee. Except as otherwise expressly provided, abolition of an agency, authority or advisory committee shall not affect the rights and duties that matured, penalties that were incurred, civil or criminal liabilities that arose or proceedings that were begun before the effective date of abolition.

Section 20. (a) Each bill filed in the legislature that would create a new agency, authority or advisory committee to an agency shall be reviewed by the commission.

(b) The commission shall review the bill to determine whether:

(1) the proposed functions of the agency, authority or committee could be administered by 1 or more existing agencies, authorities or advisory committees;

(2) the form of regulation, if any, proposed by the bill is the least restrictive form of regulation that will adequately protect the public;

(3) the bill provides for adequate public input regarding any regulatory function proposed by the bill; and

(4) the bill provides for adequate protection against conflicts of interest within the agency, authority or advisory committee.

(c) On request, the commission shall forward a written comment on the legislation to the legislator who filed the bill and to the presiding officer of the legislative committee to which the bill has been referred.

Section 21. (a) The commission may accept from any source any grant, donation, gift or other form of conveyance of land, money, other real or personal property or other item of value made to the commonwealth or the commission for carrying out the purpose of this chapter.