SENATE DOCKET, NO. 1622 FILED ON: 1/21/2011

SENATE . . . . . No. 1600

The Commonwealth of Massachusetts

PRESENTED BY:

Richard T. Moore

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 establishing the Sunset Review Commission.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Richard T. Moore	*[District]*
Robert M. Koczera	*11th Bristol*
Cory Atkins	*14th Middlesex*
Steven A. Baddour	*[District]*
Gale D. Candaras	*[District]*
John V. Fernandes	*10th Worcester*
Michael R. Knapik	*[District]*
Kevin J. Kuros	*8th Worcester*
Karen E. Spilka	*[District]*
Thomas M. Stanley	*9th Middlesex*

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SENATE . . . . . No. 1600

By Mr. Moore, a petition (accompanied by bill, Senate, No. 1600) of Richard T. Moore, Robert M. Koczera, Cory Atkins, Steven A. Baddour and other members of the General Court for legislation to established the Sunset Review
Commission. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act establishing the Sunset Review Commission.

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 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", an agency as defined in section 1 of chapter 29.

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

"Commission", the Sunset Advisory Commission established in section 3.

Section 3.

16 (a) There shall be a Sunset Advisory Commission consisting of 3 members of
17 the senate, 1 of whom shall be appointed by the minority leader of the senate, 3 members of
18 house, 1 of whom shall be appointed by the minority leader of the house of representatives, 1
19 member from the Pioneer Institute, 1 member from Common Cause, 1 member from the
20 McCormack Institute for Public Affairs and one member from the Associated Industries of
21 Massachusetts. The president of the senate and the speaker of the house may serve as legislative
22 appointees.

23 (b) An individual shall not be eligible for appointment as a public member if
24 the individual or the individual's spouse is:

25 (1) employed by an agency, advisory committee or authority
26 that the commission will review during the term for which the individual would serve;

27 (2) employed by, participating in the management of, or
28 having, directly or indirectly, more than a 10 per cent interest in a business entity or other
29 organization regulated by an agency, advisory committee or authority that the commission will
30 review during the term for which the individual would serve; or

31 (3) required to register as an executive or legislative agent
32 under section 41 of chapter 3.

33 (c) A public member of the commission shall be removed if the member does
34 not have the qualifications required by subsection (b) for appointment to the commission at the
35 time of appointment or does not maintain the qualifications while serving on the commission;
36 provided, however that the validity of the commission's action shall be unaffected if taken when
37 a ground for removal of a public member from the commission exists.

38 (d) Legislative members shall serve 2-year terms, conterminous with their
39 service as elected members of the legislature. If a legislative member ceases to be a member of
40 the legislature, the legislator's position shall be declared vacant, and the balance of the term
41 filled by another legislator appointed in the same manner as the previous appointee. If the
42 president of the senate or the speaker of the house serves on the commission, service continues
43 until resignation from the commission or until the individual ceases to hold the office. Public
44 members shall serve 2-year terms expiring January 1 of each odd-numbered year.

45 (e) Members other than the president of the senate and the speaker of the
46 house are subject to the following restrictions:

47 (1) after a public member serves 6 consecutive years on the
48 commission, the individual shall not be eligible for appointment to another term or part of a term
49 until the expiration of 2 years;

50 (2) a legislative member who serves a full term may not be
51 appointed to an immediately succeeding term; and

52 (3) a public member may not serve more than 3 consecutive 2-
53 year terms; provided, however, that, for purposes of this prohibition, a member is considered to
54 have served a term only if the member has served more than half of the term.

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

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

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

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

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

73 (k) Subject to appropriation, each public member of the commission shall be
74 entitled to reimbursement for actual and necessary expenses incurred in performing commission
75 duties.

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

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

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

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

84 Section 6.

85 (a) Within 1 year of the appointment and qualification of the members of the
86 commission, and the organization of the commission staff, the commission shall assign sunset
87 dates for each agency, authority and advisory committee of the commonwealth, in a six year
88 review cycle, and shall notify the head of such agency, authority and advisory committee of the
89 date selected. The commission shall then file legislation with the general court to implement the
90 abolition schedule.

91 (b) The six year review cycle shall be in accordance with the following: (1)
92 those agencies relative to education, children and families, (2) those agencies relative to health
93 and human services, (3) those agencies relative to public safety and corrections, including county
94 sheriffs, (4) those agencies relative to transportation and infrastructure, (5) those agencies
95 relative to environment, energy, and natural resources, (6) those agencies relative to
96 administration and finance and all others.

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

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

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

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

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

109 (d) The first review cycle shall occur in the second full year after enactment
110 of this

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

113 Section 7.

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

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

120 Section 8.

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

124 (b) In the report the commission shall include:

125 (1) its findings under section 9;

126 (2) its recommendations under this chapter; and

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

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

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

135 (2)

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

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

141 (3)

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

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

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

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

151 (6) the extent to which the jurisdiction of the agency, authority or advisory
152 committee and the programs administered by the agency, authority or advisory committee
153 overlap or duplicate those of other agencies, authorities or advisory committees, the extent to
154 which the agency, authority or advisory committee coordinates with those agencies, authorities
155 or advisory committees, and the extent to which the programs administered by the agency,
156 authority or advisory committee can be consolidated with the programs of other authorities,
157 agencies or advisory committees;

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

162 (8) an assessment of the agency's, authority's or advisory committee's
163 rulemaking process and the extent to which the agency, authority or advisory committee has
164 encouraged participation by the public in making its rules and decisions and the extent to which
165 the public participation has resulted in rules that benefit the public;

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

168 (a) federal and state laws and applicable rules regarding
169 equality of employment opportunity and the rights and privacy of individuals; and

170 (b) state law and applicable rules of any state agency, authority
171 or advisory committee regarding purchasing guidelines and programs for historically
172 underutilized businesses;

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

175 (11) the extent to which the agency or authority complies with chapters 66 and
176 66A and follows records management practices that enable the agency to respond efficiently to
177 requests for public information;

178 (12) the effect of federal intervention or loss of federal funds if the agency,
179 authority or advisory committee is abolished;

180 (13) the extent to which the authority has issued bonds or otherwise incurred
181 similar long-term obligations, the amount of outstanding bonded indebtedness for which the

182 authority is responsible and the sustainability of another authority assuming responsibility for
183 such long-term obligations;

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

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

190 Section 10.

191 (a) In its report on an agency, authority or advisory committee, the
192 commission shall:

193 (1) make recommendations on the abolition, continuation or
194 reorganization of each affected agency, authority or advisory committee, and on the need for
195 performance of the functions of the agency, authority or advisory committee;

196 (2) make recommendations on the consolidation, transfer or
197 reorganization of programs within agencies or authorities not under review when the programs
198 duplicate functions performed in agencies or authorities under review;

199 (3) make recommendations to improve the operations of the agency,
200 its policy body, authority or advisory committee, including management recommendations that
201 do not require a change in the agency's or authority's enabling statute; and

202 (4) make recommendations to improve the efficiency and
203 transparency in third party contract awards related to legal representation, bonds and fiscal
204 management, including, but not limited to, recommending utilization of an open and competitive
205 bid process.

206 (b) The commission shall include the estimated fiscal impact of its
207 recommendations and may recommend appropriation levels for certain programs to improve the
208 operations of the agency, authority or advisory committee, to be forwarded to the house and
209 senate committees on ways and means and the executive office for administration and finance.

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

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

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

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

223 (b) The commission's action in exempting an agency, authority or advisory
224 committee under this section must be done by an affirmative record vote and must be decided by
225 a majority of all members present and voting.

226 Section 12. During each legislative session, the staff of the commission shall
227 monitor legislation affecting agencies, authorities and advisory committees that have undergone
228 sunset review and shall periodically report to the members of the commission on proposed
229 changes which would modify prior recommendations of the commission.

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

233 Section 14.

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

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

238 (1) terminating a state agency, authority or advisory committee
239 subject to this chapter at a date earlier than that provided in this chapter; or

240 (2) considering other legislation relative to a state agency,
241 authority or advisory committee subject to this chapter.

242 Section 15.

243 (a) An agency, authority or advisory committee that is abolished in an odd-
244 numbered year may continue in existence until June 30 of the following year to conclude its
245 business. Unless the law provides otherwise, abolition does not reduce or otherwise limit the
246 powers and authority of the agency or authority during the concluding year. An agency or
247 authority is terminated and shall cease all activities at the expiration of the 1-year period. Unless

248 the law provides otherwise, all rules that have been adopted by the agency or authority expire at
249 the expiration of the 1-year period.

250 (b) An un-obligated or unexpended appropriation of an abolished agency or
251 advisory committee shall lapse on September 1 of the year after abolition.

252 (c) Except as provided by subsection (f) or as otherwise provided by law, all
253 money in a dedicated fund of an abolished state agency, authority or advisory committee on
254 September 1 of the year after abolition shall be transferred to the General Fund. The part of the
255 law dedicating the money to a specific fund of an abolished agency becomes void on September
256 1 of the year after abolition.

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

260 (e) Unless the governor designates an appropriate agency as prescribed by
261 subsection (f), property and records in the custody of an abolished state agency, authority or
262 advisory committee on September 1 of the year after abolition shall be transferred to the state
263 archives. If the governor designates an appropriate agency, the property and records shall be
264 transferred to the designated agency.

265 (f) The legislature recognizes the state's continuing obligation to pay bonded
266 indebtedness and all other obligations, including lease, contract, and other written obligations,
267 incurred by an agency or authority abolished under this chapter, and this chapter shall not impair
268 or impede the payment of bonded indebtedness and all other obligations, including lease,
269 contract and other written obligations, in accordance with their terms. If an abolished agency or
270 authority has outstanding bonded indebtedness or other outstanding obligations, including lease,
271 contract or other written obligations, the bonds and all other obligations, including lease, contract
272 and other written obligations shall remain valid and enforceable in accordance with their terms
273 and subject to all applicable terms and conditions of the laws and proceedings authorizing the
274 bonds and all other obligations, including lease, contract and other written obligations. The
275 governor shall designate an appropriate agency or authority that shall continue to carry out all
276 covenants contained in the bonds and in all other obligations, including lease, contract and other
277 written obligations, to complete the construction of projects or the performance of other
278 obligations, including lease, contract, and other written obligations. The designated agency or
279 authority shall provide payment from the sources of payment of the bond under the terms of the
280 bonds and shall provide payment from the sources of payment of all other obligations, including
281 lease, contract and other written obligations, under their terms, whether from taxes, revenues, or
282 otherwise, until the bonds and interest on the bonds are paid in full and all other obligations,
283 including lease, contract and other written obligations, are performed and paid in full. If the
284 proceedings so provide, all funds established by laws or proceedings authorizing the bonds or

285 authorizing other obligations, including lease, contract and other written obligations, shall remain
286 with the comptroller or the previously designated trustees. If the proceedings do not provide that
287 the funds remain with the comptroller or the previously designated trustees, the funds shall be
288 transferred to the designated agency or authority.

289 Section 16.

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

294 (b) If a majority of the commission directs the issuance of a subpoena, the
295 chairman shall issue the subpoena in the name of the commission.

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

298 (d) If necessary to obtain compliance with a subpoena or other process, the
299 commission may issue attachments. The attachments may be addressed to and served by a
300 constable, sheriff or deputy sheriff in the commonwealth.

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

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

305 Section 17.

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

308 (b) In carrying out its functions under this chapter, the commission or its
309 designated staff member may inspect the records, documents and files of any agency or
310 authority.

311 Section 18.

312 (a) A working paper, including all documentary or other information,
313 prepared and maintained by the commission staff in performing its duties under this chapter or
314 other law to conduct an evaluation and prepare a report is exempted from the public disclosure
315 requirements of chapter 66.

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

320 Section 19. If an employee is displaced because an agency, authority or
321 advisory committee is abolished, reorganized or continued, the head of the agency, authority or
322 advisory committee and the personnel administrator of the commonwealth shall make a
323 reasonable effort to relocate the displaced employee. Except as otherwise expressly provided,
324 abolition of an agency, authority or advisory committee shall not affect the rights and duties that
325 matured, penalties that were incurred, civil or criminal liabilities that arose, or proceedings that
326 were begun before the effective date of abolition.

327 Section 20.

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

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

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

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

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

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

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

343 Section 21. (a) The commission may accept from any source any grant,
344 donation, gift or other form of conveyance of land, money, other real or personal property or
345 other item of value made to the commonwealth or the commission for carrying out the purpose
346 of this section and sections 1 to 20, inclusive.