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:
Kevin J. Kuros	*8th Worcester*
Bruce E. Tarr	*First Essex and Middlesex*
Keiko M. Orrall	*12th Bristol*
Ryan C. Fattman	*18th Worcester*

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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

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

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

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

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

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

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

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

37 from the speaker's appointed membership group.

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

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

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

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

49 (2) any other information that the agency, advisory committee or authority

50 considers appropriate or that the commission requests.

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

56 (b) Before January 1 of the year in which an agency, advisory committee or

57 authority subject to this chapter is scheduled to be abolished, the commission shall:

58 (1) review and take action necessary to verify the reports submitted by the

59 agency, advisory committee or authority under this chapter;

60 (2) consult the house and senate committees on post audit and oversight,

61 the state auditor, the inspector general and the state comptroller on the application to the
62 agency, advisory committee or authority of the criteria in section 9;

63 (3) conduct a review of the agency, advisory committee or authority based

64 on the criteria in section 9 and prepare a written report; and

65 (4) review the implementation of commission recommendations contained

66 in the reports presented to the legislature during the preceding legislative session and the
67 resulting legislation.

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

70 Section 7. (a) Before February 1 of the year in which an agency, advisory

71 committee or authority subject to this chapter and is to be abolished, the commission
72 shall conduct public hearings concerning, but not limited to, the application to the agency,
73 advisory committee or authority of the criteria in section 9.

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

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

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

80 (1) its findings under section 9;

81 (2) its recommendations under this chapter; and

82 (3) other information the commission considers necessary for a complete

83 review of the agency, advisory committee or authority.

84 Section 9. The commission and its staff shall consider the following criteria in

85 determining whether a public need exists for the continuation of a state agency, authority
86 or advisory committee or for the performance of the functions of the agency, authority or
87 advisory committee:

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

90 (2) (a) an identification of the mission, goals and objectives intended for the

91 agency, authority or advisory committee and of the problem or need that the agency,
92 authority or advisory committee was intended to address; and

93 (b) the extent to which the mission, goals and objectives have been

94 achieved and the problem or need has been addressed;

95 (3) (a) an identification of any activities of the agency, authority or advisory

96 committee in addition to those granted by statute and of the authority, of the agency,
97 authority or advisory to conduct those activities; and

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

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

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

104 (6) the extent to which the jurisdiction of the agency, authority or advisory

105 committee and the programs administered by the agency, authority or advisory committee
106 overlap or duplicate those of other agencies, authorities or advisory committees, the extent to
107 which the agency, authority or advisory committee coordinates with those agencies, authorities

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

110 programs of other authorities, agencies or advisory committees;

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

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

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

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

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

121 employment opportunity and the rights and privacy of individuals; and

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

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

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

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

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

131 authority or advisory committee is abolished;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

190 advisory committee subject to this chapter.

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

198 period.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

275 (1) the proposed functions of the agency, authority or committee could be

276 administered by 1 or more existing agencies, authorities or advisory committees;

277 (2) the form of regulation, if any, proposed by the bill is the least

278 restrictive form of regulation that will adequately protect the public;

279 (3) the bill provides for adequate public input regarding any regulatory

280 function proposed by the bill; and

281 (4) the bill provides for adequate protection against conflicts of interest

282 within the agency, authority or advisory committee.

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

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