SENATE DOCKET, NO. 1304 FILED ON: 1/18/2013

SENATE . . . . . No. 1510

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 adoption of the accompanying bill:

An Act establishing the Sunset Review Commission.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Richard T. Moore	*Worcester and Norfolk*
Angelo L. D'Emilia	*8th Plymouth*
Michael O. Moore	*Second Worcester*
Randy Hunt	*5th Barnstable*
Peter J. Durant	*6th Worcester*
John V. Fernandes	*10th Worcester*
Karen E. Spilka	*Second Middlesex and Norfolk*
Mark C. Montigny	*Second Bristol and Plymouth*
Tom Sannicandro	*7th Middlesex*
Michael R. Knapik	*Second Hampden and Hampshire*
Geoff Diehl	*7th Plymouth*

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By Mr. Richard T. Moore, a petition (accompanied by bill, Senate, No. 1510) of Richard T. Moore, Angelo L. D'Emilia, Michael O. Moore, Randy Hunt and other members of the General Court for legislation to established the Sunset Review Commission. State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *1600* OF 2011-2012.]

The Commonwealth of Massachusetts

In the Year Two Thousand Thirteen

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.

14 “Commission”, the Sunset Advisory Commission established in section 3.

15 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 that the
26 commission will review during the term for which the individual would serve;

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

31 (3) required to register as an executive or legislative agent under section
32 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 house
46 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 appointed
51 to an immediately succeeding term; and

52 (3) a public member may not serve more than 3 consecutive 2-year
53 terms; provided, however, that, for purposes of this prohibition, a member is considered to have
54 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 action
69 or recommendation may not be made unless approved by a recorded roll call vote of a majority
70 of members appointed by the president of the senate and the speaker of the house. All other
71 actions by the commission shall be decided by a majority of the members present and voting, so
72 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, advisory
81 committee or authority of the criteria set forth in section 9; and

82 (2) any other information that the agency, advisory committee or
83 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 submitted by
100 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 authority
105 based on the criteria in section 9 and prepare a written report; and

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

109 (d) The first review cycle shall occur in the second full year after enactment of
110 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 intended for
137 the agency, authority or advisory committee and of the problem or need that the agency,
138 authority or advisory committee was intended to address; and

139 (b) the extent to which the mission, goals and objectives have been
140 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 that
149 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 equality of
169 employment opportunity and the rights and privacy of individuals; and

170 (b) state law and applicable rules of any state agency, authority or
171 advisory committee regarding purchasing guidelines and programs for historically underutilized
172 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 commission
192 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, its
200 policy body, authority or advisory committee, including management recommendations that do
201 not require a change in the agency's or authority's enabling statute; and

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

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

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

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

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

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

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

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

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

232 Section 14.

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

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

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

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

241 Section 15.

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

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

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

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

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

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

279 bonds and shall provide payment from the sources of payment of all other obligations, including
280 lease, contract and other written obligations, under their terms, whether from taxes, revenues, or
281 otherwise, until the bonds and interest on the bonds are paid in full and all other obligations,
282 including lease, contract and other written obligations, are performed and paid in full. If the
283 proceedings so provide, all funds established by laws or proceedings authorizing the bonds or
284 authorizing other obligations, including lease, contract and other written obligations, shall remain
285 with the comptroller or the previously designated trustees. If the proceedings do not provide that
286 the funds remain with the comptroller or the previously designated trustees, the funds shall be
287 transferred to the designated agency or authority.

288 Section 16.

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

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

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

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

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

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

304 Section 17.

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

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

310 Section 18.

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

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

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

326 Section 20.

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

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

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

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

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

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

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

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