

**SENATE . . . . . No. 01600**

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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 bill:

An Act establishing the Sunset Review Commission.

PETITION OF:

| NAME:                    | DISTRICT/ADDRESS:                   |
|--------------------------|-------------------------------------|
| <i>Richard T. Moore</i>  | <i>Worcester and Norfolk</i>        |
| <i>Robert M. Koczera</i> | <i>11th Bristol</i>                 |
| <i>Cory Atkins</i>       | <i>14th Middlesex</i>               |
| <i>Steven A. Baddour</i> | <i>First Essex</i>                  |
| <i>Gale D. Candaras</i>  | <i>First Hampden and Hampshire</i>  |
| <i>John V. Fernandes</i> | <i>10th Worcester</i>               |
| <i>Michael R. Knapik</i> | <i>Second Hampden and Hampshire</i> |
| <i>Kevin Kuros</i>       | <i>8th Worcester</i>                |
| <i>Karen E. Spilka</i>   | <i>Second Middlesex and Norfolk</i> |
| <i>Thomas M. Stanley</i> | <i>9th Middlesex</i>                |

**SENATE . . . . . No. 01600**

By Mr. Moore, petition (accompanied by bill, Senate, No. 1600) of Stanley, Spilka, Kuros and other members of the General Court for legislation to established the Sunset Review Commission [Joint Committee on 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:*

1 SECTION 1. The General Laws are hereby amended by inserting after chapter 3 the  
2 following chapter:--

3 CHAPTER 3A.

4 THE SUNSET ACT.

5 Section 1. There is hereby established a procedure for the identification and  
6 elimination of waste, duplication and inefficiency in state government agencies and authorities  
7 established by statute, regulation or executive order to be known as the Sunset Act.

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

10 “Advisory committee”, a committee, council, commission or other entity established under state  
11 law whose primary function is to advise a state agency.

12 “Agency”, an agency as defined in section 1 of chapter 29.

13 "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 the  
17 senate, 1 of whom shall be appointed by the minority leader of the senate, 3 members of house, 1  
18 of whom shall be appointed by the minority leader of the house of representatives, 1 member  
19 from the Pioneer Institute, 1 member from Common Cause, 1 member from the McCormack  
20 Institute for Public Affairs and one member from the Associated Industries of Massachusetts.  
21 The president of the senate and the speaker of the house may serve as legislative appointees.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

81 Section 6.

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

88 (b) The six year review cycle shall be in accordance with the following: (1) those  
89 agencies relative to education, children and families, (2) those agencies relative to health and  
90 human services, (3) those agencies relative to public safety and corrections, including county  
91 sheriffs, (4) those agencies relative to transportation and infrastructure, (5) those agencies

92 relative to environment, energy, and natural resources, (6) those agencies relative to  
93 administration and finance and all others.

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

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

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

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

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

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

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

109 Section 7.

110 (a) Before February 1 of the year in which an agency, advisory committee or  
111 authority subject to this chapter and is to be abolished, the commission shall conduct public

112 hearings concerning, but not limited to, the application to the agency, advisory committee or  
113 authority of the criteria in section 9.

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

116 Section 8.

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

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

120 (1) its findings under section 9;

121 (2) its recommendations under this chapter; and

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

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

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

130 (2)



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

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

136 (3)

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

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

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

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

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

151 advisory committee can be consolidated with the programs of other authorities, agencies or  
152 advisory committees;

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

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

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

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

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

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

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

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

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

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

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

185 Section 10.

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

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

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

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

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

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

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

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

209           Section 11. In the 2-year period preceding the date scheduled for the abolition of a  
210 state agency, authority or advisory committee under this chapter, the commission may exempt

211 certain agencies, authorities or advisory committees from the requirements of this chapter  
212 relating to staff reports, hearings, and reviews.

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

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

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

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

227 Section 14.

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

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

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

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

236 Section 15.

237 (a) An agency, authority or advisory committee that is abolished in an odd-numbered  
238 year may continue in existence until June 30 of the following year to conclude its business.

239 Unless the law provides otherwise, abolition does not reduce or otherwise limit the powers and  
240 authority of the agency or authority during the concluding year. An agency or authority is  
241 terminated and shall cease all activities at the expiration of the 1-year period. Unless the law  
242 provides otherwise, all rules that have been adopted by the agency or authority expire at the  
243 expiration of the 1-year period.

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

246 (c) Except as provided by subsection (f) or as otherwise provided by law, all money  
247 in a dedicated fund of an abolished state agency, authority or advisory committee on September  
248 1 of the year after abolition shall be transferred to the General Fund. The part of the law  
249 dedicating the money to a specific fund of an abolished agency becomes void on September 1 of  
250 the year after abolition.

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

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

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

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

283           Section 16.

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

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

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

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



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

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

299 Section 17.

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

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

304 Section 18.

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

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

313 Section 19. If an employee is displaced because an agency, authority or advisory  
314 committee is abolished, reorganized or continued, the head of the agency, authority or advisory  
315 committee and the personnel administrator of the commonwealth shall make a reasonable effort

316 to relocate the displaced employee. Except as otherwise expressly provided, abolition of an  
317 agency, authority or advisory committee shall not affect the rights and duties that matured,  
318 penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were  
319 begun before the effective date of abolition.

320 Section 20.

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

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

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

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

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

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

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

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