

SENATE No.

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 Massachusetts Sunset Review Commission and Establishing a Procedure to Identify and Eliminate Waste, Duplication, and Inefficiency in State Government Agencies and Authorities.

PETITION OF:

NAME:

Richard T. Moore

DISTRICT/ADDRESS:

Worcester and Norfolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

An Act Establishing the Massachusetts Sunset Review Commission and Establishing a Procedure to Identify and Eliminate Waste, Duplication, and Inefficiency in State Government Agencies and Authorities.

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, as appearing in the 2008 Official Edition, are hereby amended
2 by inserting after Chapter 3, the following new Chapter:-

3 CHAPTER 3A. The Massachusetts Sunset Act.

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

7 SECTION 2. DEFINITIONS.

8 For the purpose of this Chapter, the following definitions shall apply:

- 9 (a) "State Agency" means an agency expressly made subject to this Chapter;
- 10 (b) "Advisory Committee" means a committee, council, commission, or other entity created under
11 state law whose primary function is to advise a state agency;
- 12 (c) "Commission" means the Sunset Advisory Commission;
- 13 (d) "Authority" shall include, but is not limited to: The Bay State Skills Corporation, Centers of
14 Excellence, Commonwealth Connector Authority, Community Economic Development
15 Assistance Corporation, Community Development Finance Corporation, Government Land
16 Bank, Massachusetts Bay Transportation Authority, Massachusetts Business Development
17 Corporation, Massachusetts Capital Resource Company, Massachusetts Convention Center

18 Authority, Massachusetts Corporation for Educational Telecommunications, Massachusetts
19 Educational Loan Authority, Massachusetts Health and Educational Facilities Authority,
20 Massachusetts Higher Education Assistance Corporation, Massachusetts Housing Finance
21 Agency, Massachusetts Industrial Finance Agency, Massachusetts Industrial Service Program,
22 Massachusetts Legal Assistance Corporation, Massachusetts Port Authority, Massachusetts
23 Product Development Corporation, Massachusetts Technology Development Corporation,
24 Massachusetts Technology Park Corporation, Massachusetts Turnpike Authority, Massachusetts
25 Water Resource Authority, Nantucket Land Bank, New England Loan Marketing Corporation,
26 Pension Reserves Investment Management Board, State College Building Authority,
27 Southeastern Massachusetts University Building Authority, Thrift Institutions Fund for Economic
28 Development, University of Lowell Building Authority, University of Massachusetts Building
29 Authority, Victim and Witness Assistance Board, and the Woods Hole, Martha's Vineyard and
30 Nantucket Steamship Authority.

31 SECTION 3. SUNSET ADVISORY COMMISSION

- 32 (a) Notwithstanding the provisions of any other general or special law, there is hereby established a
33 Massachusetts Sunset Advisory Commission, consisting of five members of the Senate, four of
34 whom shall be appointed by the President of the Senate and one of whom shall be appointed by
35 the Minority Leader of the Senate, and one public member appointed by the President of the
36 Senate and five members of the House of Representatives, four of whom shall be appointed by
37 the Speaker of the House of Representatives, and one of whom shall be appointed by the Minority
38 Leader of the House, and one public member appointed by the Speaker of the House of
39 Representatives. The President of the Senate and the Speaker of the House may serve as one of
40 the legislative appointees.
- 41 (b) An individual is not eligible for appointment as a public member if the individual or the
42 individual's spouse is:
- 43 (1) Regulated by a state agency that the commission will review during the term for
44 which the individual would serve;
 - 45 (2) Employed by, participates in the management of, or directly or indirectly has more
46 than a ten percent interest in a business entity or other organization regulated by a
47 state agency the commission will review during the term for which the individual
48 would serve; or
 - 49 (3) Required to register as a lobbyist pursuant to section forty-one of chapter three
50 because of the person's activities for compensation on behalf of a profession or entity
51 related to the operation of an agency under review.

- 52 (c) It is a ground for removal of a public member of the commission if the member does not have the
53 qualifications required by subsection (b) for appointment to the commission at the time of
54 appointment or does not maintain the qualifications while serving on the commission. The
55 validity of the commission's action is not affected by the fact that it was taken when a ground for
56 removal of a public member from the commission existed.
- 57 (d) Legislative members serve two-year terms, conterminous with their service as elected members
58 of the Legislature. If legislative members cease to be members of the Legislature, their position
59 shall be declared vacant, and the balance of the term filled by another legislator appointed in the
60 same manner as the previous appointee. If the President of the Senate or the Speaker of the
61 House serves on the commission, service continues until resignation from the commission or until
62 the individual ceases to hold the office. Public members serve two year terms expiring January 1
63 of each odd-numbered year.
- 64 (e) Members other than the President of the Senate and the Speaker of the House are subject to the
65 following restrictions:
- 66 (1) After a public members serves six consecutive years on the commission, the
67 individual is not eligible for appointment to another term or part of a term until the
68 expiration of two years;
- 69 (2) A legislative member who serves a full term may not be appointed to an immediately
70 succeeding term; and
- 71 (3) A public member may not serve more than three consecutive two year terms, and, for
72 purposes of this prohibition, a member is considered to have served a term only if the
73 member has served more than half of the term.
- 74 (f) The President of the Senate and the Speaker of the House shall make their appointments before
75 February 1 of each odd-numbered year.
- 76 (g) If a legislative member ceases to be a member of the house from which he was appointed, that
77 member vacates his membership on the commission.
- 78 (h) If a vacancy occurs, the appropriate appointing authority shall appoint a person to serve for the
79 remainder of the unexpired term in the same manner as the original appointment.
- 80 (i) The commission shall have a chairman and a vice-chairman as presiding officers. The
81 chairmanship and vice-chairmanship must alternate every two years between the two membership
82 groups appointed by the President of the Senate and the Speaker of the House. The chairman and
83 vice-chairman may not be from the same membership group. The President of the Senate shall
84 designate a presiding officer from his or her appointed membership group and the Speaker shall
85 designate the other presiding officer from his or her appointed membership group.
- 86 (j) Seven members of the commission constitute a quorum. A final action or recommendation may
87 not be made unless approved by a recorded roll call vote of a majority of members appointed by

88 the President of the Senate and the Speaker of the House. All other actions by the commission
89 shall be decided by a majority of the members present and voting.

90 (k) Each member of the commission is entitled to reimbursement for actual and necessary expenses
91 incurred in performing commission duties. Each legislative member is entitled to reimbursement
92 from the appropriate fund of the member's respective house. Each public member is entitled to
93 reimbursement funds appropriated to the commission.

94 SECTION 4. STAFF

95 (a) The commission shall employ an executive director to act as the executive head of the
96 commission.

97 (b) The executive director shall employ persons necessary to carry out this chapter through funds
98 made available by the Legislature.

99 (c) The chairman and vice-chairman of the commission may each employ a staff person to work for
100 them on matters related to commission activities.

101 SECTION 5. RULES

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

103 SECTION 6. AGENCY REPORT TO COMMISSION

104 Before July 1 of the odd-numbered year before the year in which a state agency subject to this chapter
105 is abolished, the agency shall report to the commission:

106 (1) Information regarding the application to the agency of the criteria set forth herein;
107 and

108 (2) Any other information that the agency considers appropriate or that is requested by
109 the commission.

110 SECTION 7. COMMISSION DUTIES.

111 (a) Within one year of the appointment and qualification of the members of the commission, and the
112 organization of the commission staff, the commission shall assign sunset dates for each agency,
113 authority, and advisory committee of the Commonwealth, and shall notify the head of such
114 agency, authority, and advisory committee of the date selected. The commission shall then file
115 legislation with the General Court to implement the abolition schedule.

116 (b) Before January 1 of the year in which a state agency subject to this chapter and its advisory
117 committees are scheduled to be abolished, the commission shall:

- 118 (1) Review and take action necessary to verify the reports submitted by the agency
119 pursuant to this chapter;
- 120 (2) Consult the Senate Committee on Post Audit & Legislative Oversight, the House
121 Committee on Post Audit & Legislative Oversight, the State Auditor, the Inspector
122 General, and the State Comptroller, or their successors, on the application to the
123 agency of the criteria provided herein;
- 124 (3) Conduct a review of the agency based on the criteria provided herein and prepare a
125 written report; and
- 126 (4) Review the implementation of commission recommendations contained in the reports
127 presented to the Legislature during the preceding legislative session and the resulting
128 legislation.
- 129 (c) The written report prepared by the commission under subsection (a)(3) is a public record.

130 SECTION 8. PUBLIC HEARINGS.

- 131 (a) Before February 1 of the year a state agency subject to this chapter and its advisory committees
132 are abolished, the commission shall conduct public hearings concerning but not limited to the
133 application to the agency of the criteria provided herein.
- 134 (b) The commission may hold the public hearings after the review of the agency required herein is
135 complete and available to the public.

136 SECTION 9. COMMISSION REPORT.

- 137 (a) At each regular legislative session, the commission shall present to the Legislature and the
138 Governor a report on the agencies and advisory committees reviewed.
- 139 (b) In the report the commission shall include:
- 140 (1) Its findings regarding the criteria prescribed herein;
- 141 (2) Its recommendations based on the matters prescribed herein; and
- 142 (3) Other information the commission considers necessary for a complete review of the
143 agency.

144 SECTION 10. CRITERIA FOR REVIEW.

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

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

- 150 (2)
- 151 (a) an identification of the mission, goals, and objectives intended for the agency,
152 authority, or advisory committee and of the problem or need that the agency,
153 authority, or advisory committee was intended to address; and
- 154 (b) the extent to which the mission, goals, and objectives have been achieved and the
155 problem or need has been addressed;
- 156 (3)
- 157 (a) An identification of any activities of the agency or authority in addition to those
158 granted by statute and of the authority for those activities; and
- 159 (b) The extent to which those activities are needed;
- 160 (4) An assessment of authority of the agency or authority relating to fees, inspections,
161 enforcement and penalties;
- 162 (5) Whether less restrictive or alternative methods of performing any function that the
163 agency or authority performs could adequately protect or provide service to the
164 public;
- 165 (6) The extent to which the jurisdiction of the agency or authority and the programs
166 administered by the agency authority overlap or duplicate those of other agencies or
167 authorities, the extent to which the agency or authority coordinates with those
168 agencies or authorities, and the extent to which the programs administered by the
169 agency or authority can be consolidated with the programs of other state agencies;
- 170 (7) The promptness and effectiveness with which the agency or authority addresses
171 complaints concerning entities or other persons affected by the agency, including an
172 assessment of the agency's or authority's administrative hearings process;
- 173 (8) An assessment of the agency's or authority's rulemaking process and the extent to
174 which the agency or authority has encouraged participation by the public in making
175 its rules and decisions and the extent to which the public participation has resulted in
176 rules that benefit the public;
- 177 (9) The extent to which the agency or authority has complied with:
- 178 (a) Federal and state laws and applicable rules regarding equality of employment
179 opportunity and the rights and privacy of individuals; and
- 180 (b) State law and applicable rules of any state agency or authority regarding
181 purchasing guidelines and programs for historically underutilized businesses;
- 182 (10) The extent to which the agency or authority issues and enforces rules relating to
183 potential conflicts of interest of its employees and Chapter 268A;

- 184 (11) The extent to which the agency or authority complies with Chapters 66 and 66A
185 and follows records management practices that enable the agency to respond
186 efficiently to requests for public information; and
187 (12) The effect of federal intervention or loss of federal funds if the agency is
188 abolished.

189 SECTION 11. RECOMMENDATIONS.

- 190 (a) In its report on a state agency, the commission shall:
- 191 (1) Make recommendations on the abolition, continuation, or reorganization of each
192 affected state agency, authority or advisory committee, and on the need for
193 performance of the functions of the agency, authority or advisory committee;
- 194 (2) Make recommendations on the consolidation, transfer, or reorganization of programs
195 within state agencies or authorities not under review when the programs duplicate
196 functions performed in agencies under review; and
- 197 (3) Make recommendations to improve the operations of the agency, its policy body, and
198 authority or advisory committee, including management recommendations that do
199 not require a change in the agency's or authority's enabling statute.
- 200 (b) The commission shall include the estimated fiscal impact of its recommendations and may
201 recommend appropriation levels for certain programs to improve the operations of the state
202 agency, to be forwarded to the House and Senate Committees on Ways & Means and the
203 Executive Office of Administration and Finance.
- 204 (c) The commission shall have drafts of legislation prepared to carry out the commission's
205 recommendations under this section.
- 206 (d) After the Legislature acts on the report, the commission shall present to the Secretary of
207 Administration and Finance, the commission's recommendations that do not require a statutory
208 change to be put into effect.

209 SECTION 12. REVIEW OF CERTAIN AGENCIES.

- 210 (a) In the two-year period preceding the date scheduled for the abolition of a state agency under this
211 chapter, the commission may exempt certain agencies from the requirements of this chapter
212 relating to staff reports, hearings, and reviews.
- 213 (b) The commission may only exempt agencies that have been inactive for a period of two years
214 preceding the date the agency is scheduled for abolition or that have been rendered inactive by an
215 action of the Legislature.
- 216 (c) The commission's action in exempting agencies or authorities under this section must be done by
217 an affirmative record vote and must be decided by a majority of all members present and voting.

218 SECTION 13. MONITORING OF RECOMMENDATIONS.

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

222 SECTION 14. ABOLITION OF ADVISORY COMMITTEES

223 An advisory committee, the primary function of which is to advise a particular state agency or
224 authority, is abolished on the date set for abolition of the agency or authority unless the advisory
225 committee is expressly continued by law.

226 SECTION 15. CONTINUATION BY LAW

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

230 (b) This chapter does not prohibit the Legislature from:

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

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

235 SECTION 16. PROCEDURE AFTER TERMINATION.

236 (a) A state agency or authority that is abolished in an odd-numbered year may continue in existence
237 until June 30 of the following year to conclude its business. Unless the law provides otherwise,
238 abolition does not reduce or otherwise limit the powers and authority of the state agency or
239 authority during the concluding year. A state agency or authority is terminated and shall cease all
240 activities at the expiration of the one-year period. Unless the law provides otherwise, all rules
241 that have been adopted by the state agency or authority expire at the expiration of the one-year
242 period.

243 (b) Any un-obligated and unexpended appropriations of an abolished agency or advisory committee
244 lapse on September 1 of the year after abolition.

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

- 249 (d) Unless the law or a specific provision in the General Appropriations Act provides otherwise, an
250 abolished state agency, authority or advisory committee funded in the General Appropriations
251 Act may not spend or obligate any of the money appropriated beyond one year from the date of
252 abolition.
- 253 (e) Unless the Governor designates an appropriate state agency as prescribed by Subsection (f),
254 property and records in the custody of an abolished state agency, authority, or advisory committee
255 on September 1 of the year after abolition shall be transferred to the state archives. If the
256 Governor designates an appropriate state agency or authority, the property and records shall be
257 transferred to the designated state agency.
- 258 (f) The Legislature recognizes the state's continuing obligation to pay bonded indebtedness and all
259 other obligations, including lease, contract, and other written obligations, incurred by a state
260 agency or authority abolished under this chapter, and this chapter does not impair or impede the
261 payment of bonded indebtedness and all other obligations, including lease, contract, and other
262 written obligations, in accordance with their terms. If an abolished state agency or authority has
263 outstanding bonded indebtedness or other outstanding obligations, including lease, contract, or
264 other written obligations, the bonds and all other obligations, including lease, contract, and other
265 written obligations, remain valid and enforceable in accordance with their terms and subject to all
266 applicable terms and conditions of the laws and proceedings authorizing the bonds and all other
267 obligations, including lease, contract, and other written obligations. The Governor shall designate
268 an appropriate state agency or authority that shall continue to carry out all covenants contained in
269 the bonds and in all other obligations, including lease, contract, and other written obligations, to
270 complete the construction of projects or the performance of other obligations, including lease,
271 contract, and other written obligations. The designated state agency or authority shall provide
272 payment from the sources of payment of the bonds in accordance with the terms of the bonds and
273 shall provide payment from the sources of payment of all other obligations, including lease,
274 contract, and other written obligations, in accordance with their terms, whether from taxes,
275 revenues, or otherwise, until the bonds and interest on the bonds are paid in full and all other
276 obligations, including lease, contract, and other written obligations, are performed and paid in
277 full. If the proceedings so provide, all funds established by laws or proceedings authorizing the
278 bonds or authorizing other obligations, including lease, contract, and other written obligations,
279 shall remain with the comptroller or the previously designated trustees. If the proceedings do not
280 provide that the funds remain with the comptroller or the previously designated trustees, the funds
281 shall be transferred to the designated state agency.

282 SECTION 16. SUBPOENA POWER.

- 283 (a) The Commission may issue process to compel the attendance of witnesses and the production of
284 books, records, papers, and other objects necessary or proper for the purposes of the commission
285 proceedings. The process may be served on a witness at any place in this state;
- 286 (b) If a majority of the commission directs the issuance of a subpoena, the chairman shall issue the
287 subpoena in the name of the commission;
- 288 (c) If the chairman is absent, the chairman's designee may issue a subpoena or other process in the
289 same manner as the chairman;
- 290 (d) If necessary to obtain compliance with a subpoena or other process, the commission may issue
291 attachments. The attachments may be addressed to and served by any peace officer in this state;
- 292 (e) Testimony taken under subpoena must be reduced to writing and given under oath subject to the
293 penalties of perjury;
- 294 (f) A witness who attends a commission proceeding under process is entitled to the same mileage
295 and per diem as a witness who appears before a grand jury in this state.

296 SECTION 17. ASSISTANCE OF AND ACCESS TO STATE AGENCIES

- 297 (a) The commission may request the assistance of state agencies and officers. When assistance is
298 requested, a state agency or officer shall assist the commission.
- 299 (b) In carrying out its functions under this chapter, the commission or its designated staff member
300 may inspect the records, documents, and files of any state agency.

301 SECTION 18. RECORDS PROTECTED FROM DISCLOSURE.

- 302 (a) A working paper, including all documentary or other information, prepared and maintained by the
303 commission staff in performing its duties under this chapter or other law to conduct an evaluation
304 and prepare a report is excepted from the public disclosure requirements of Chapter 66.
- 305 (b) A record held by another entity that is considered to be confidential by law and that the
306 commission receives in connection with the performance of the commission's functions under
307 this chapter or another law remains confidential and is excepted from the public disclosure
308 requirements of Chapter 66.

309 SECTION 19. RELOCATION OF EMPLOYEES.

310 If an employee is displaced because a state agency, authority, or advisory committee is abolished,
311 reorganized, or continued, the state agency and the Executive Office of Labor and Workforce
312 Development shall make a reasonable effort to relocate the displaced employee. Except as otherwise
313 expressly provided, abolition of a state agency does not affect the rights and duties that matured,
314 penalties that were incurred, civil or criminal liabilities that arose, or proceedings that were begun
315 before the effective date of abolition.

316

317 SECTION 20. REVIEW OF PROPOSED LEGISLATION CREATING AN AGENCY

318 (a) Each bill filed in a house of the Legislature that would create a new state agency, a new authority,
319 or a new advisory committee to a state agency shall be reviewed by the commission.

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

321 (1) The proposed functions of the agency or committee could be administered by one or
322 more existing state agencies or advisory committees;

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

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

327 (4) The bill provides for adequate protection against conflicts of interest within the
328 agency or committee.

329 (c) On request, the commission shall forward a written comment on the legislation to the author of
330 the bill and to the presiding officer of the committee to which the bill is referred.

331 SECTION 21. GIFTS AND GRANTS.

332 (a) The commission may accept gifts, grants, and donations from any organization described in
333 Section 501(c)(3) of the Internal Revenue Code for the purpose of funding any activity under this
334 chapter.

335 (b) All gifts, grants, and donations must be accepted in an open meeting by a majority of the voting
336 members of the commission and reported in the public record of the commission with the name of
337 the donor and purpose of the gift, grant, or donation.