

**HOUSE . . . . . No. 00845**

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The Commonwealth of Massachusetts

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PRESENTED BY:

*Todd M. Smola*

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*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 relative to the Secretary of State and ethics reform.

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PETITION OF:

NAME:

*Todd M. Smola*

DISTRICT/ADDRESS:

*1st Hampden*

# HOUSE . . . . . No. 00845

By Mr. Todd M. Smola of Palmer, petition (accompanied by bill, House, No. 00845) of Todd M. Smola relative to the powers of the Secretary of the Commonwealth regarding certain ethics laws. Joint Committee on State Administration and Regulatory Oversight.

[SIMILAR MATTER FILED IN PREVIOUS SESSION  
SEE  
□ HOUSE  
□ , NO. 3978 OF 2009-2010.]

## The Commonwealth of Massachusetts

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**In the Year Two Thousand Eleven**  
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An Act relative to the Secretary of State and ethics reform.

□.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 1. Section 41 of chapter 3 OF THE General Laws, as appearing in the 2006 Official Edition, is  
2 hereby amended by adding the following 2 paragraphs:-

3 The state secretary shall adopt regulations pursuant to chapter 30A to carry out the provisions of  
4 sections 39 to50, inclusive.

5 The state secretary shall, upon written request from a person who is or may be subject to sections  
6 39 to 50, inclusive, render advisory opinions on the requirements of those sections. An opinion  
7 rendered by the state secretary, until and unless amended or revoked, shall be a defense in a  
8 criminal action brought under sections 39 to 50, inclusive, and shall be binding on the state

9 secretary and the attorney general in any subsequent proceedings concerning the person who  
10 requested the opinion and who acted in good faith, unless material facts were omitted or  
11 misstated by the person in the request for an opinion. Such requests shall be confidential; but the  
12 state secretary may publish such opinions if the name of the requesting person and any other  
13 identifying information is not included in such publication, unless the requesting person consents  
14 to such inclusion.

15 SECTION 2. Said chapter 3 of the General Laws, as so appearing, is hereby further amended by  
16 striking out section 45 and inserting in place thereof the following section:-

17 Section 45. (a) Upon receipt of a sworn complaint signed under pains and penalties of perjury  
18 and upon receipt of evidence which is deemed sufficient by the state secretary, the state  
19 secretary shall initiate a preliminary inquiry into any alleged violation of sections 39 to 50. Prior  
20 to the commencement of a preliminary inquiry into any such alleged violation, the state secretary  
21 shall notify the attorney general of such action. All proceedings and records relating to a  
22 preliminary inquiry or initial staff review to determine whether to initiate an inquiry shall be  
23 confidential, except that the state secretary may provide to: (1) the attorney general, the United  
24 States Attorney or a district attorney of competent jurisdiction, evidence which may be used in a  
25 criminal proceeding; (2) the inspector general information concerning fraud, waste, or abuse in  
26 the expenditure of public funds; (3) the state ethics commission concerning violations of chapters  
27 268A and 268B; and (4) the director of the office of campaign and political finance information  
28 concerning violations of chapter 55. Any information provided by the state secretary pursuant to  
29 this section shall be confidential in accordance with this section and section 4 of chapter 268B,  
30 except that such information may be used by the officer or agency to whom it was provided in

31 any investigation or subsequent proceedings. The state secretary shall notify any person who is  
32 the subject of the preliminary inquiry of the existence of such inquiry and the general nature of  
33 the alleged violation within 30 days of the commencement of the inquiry.

34 (b) If a preliminary inquiry fails to indicate reasonable cause for belief that any provision  
35 of sections 39 to 50 of this chapter has been violated, the state secretary shall immediately  
36 terminate the inquiry and so notify, in writing, the complainant, if any, and  
37 the person who had been the subject of the inquiry.

38 (c) If a preliminary inquiry indicates reasonable cause for belief that any provision of  
39 sections 39 to 50 has been violated, the state secretary may  
40 initiate an adjudicatory proceeding to determine whether there has been such a violation.

41 (d) The state secretary may require by summons the attendance and testimony of witnesses and  
42 the production of books, papers and other records relating to any matter being investigated by it  
43 pursuant to this chapter. Such summons may be issued by the state secretary and shall be served  
44 in the same manner as summonses for witnesses in civil cases, and all provisions of law relative  
45 to summonses issued in such cases, including the compensation of witnesses, shall apply to  
46 summonses issued by the state secretary. Such summonses shall have the same force, and be  
47 obeyed in the same manner, and under the same penalties in case of default, as if issued by order  
48 of a justice of the superior court and may be quashed only upon motion of the summonsed party  
49 and by order of a justice of the superior court .

50 (e) The state secretary or his designee may administer oaths and may hear testimony or receive  
51 other evidence in any proceeding.

52 (f) All testimony in an adjudicatory proceeding shall be under oath. All parties shall have the  
53 right to call and examine witnesses, to introduce exhibits, to cross-examine witnesses who  
54 testify, to submit evidence, and to be represented by counsel. Before testifying, all witnesses  
55 shall be given a copy of the regulations governing adjudicatory proceedings. All witnesses shall  
56 be entitled to be represented by counsel

57 (g) Any person whose name is mentioned during an adjudicatory proceeding of the state  
58 secretary and who may be adversely affected thereby may appear personally before the state  
59 secretary on his own behalf, with or without an attorney, to give a statement in opposition to  
60 such adverse mention or file a written statement of such opposition for incorporation into the  
61 record of the proceeding.

62 (h) All hearings in adjudicatory proceedings of the state secretary carried out pursuant to  
63 the provisions of this section shall be public.

64 (i) Within 30 days after completion of deliberations, the state secretary shall publish a  
65 written report of his findings and conclusions.

66 (j) Upon a finding pursuant to an adjudicatory proceeding that there has been a violation  
67 of this chapter, the state secretary may issue an order:

68 (1) requiring the violator to cease and desist such violation of sections 39 to 50:

69 (2) requiring the violator to file any report, statement or other information as

70 required by sections 39 to 50;

71 (3) suspending for a specified period or revoking the license and registration of  
72 the violator; or

73 (4) requiring the violator to pay a civil penalty of not more than \$10,000 for each  
74 violation of this chapter.

75 The state secretary may file a civil action in superior court to enforce this order.

76 (k) Final action by the state secretary under this section shall be subject to review in  
77 superior court upon petition of any party in interest filed within 30 days after the action  
78 for which review is sought. The court shall enter a judgment enforcing, modifying, or  
79 setting aside the order of the state secretary, or it may remand the proceedings to the state  
80 secretary for such further action as the court may direct. If the court modifies or sets aside  
81 the state secretary's order or remands the proceedings to the state secretary, the court  
82 shall determine whether such modification, set aside, or remand is substantial. If the court  
83 does find such modification, set aside, or remand to be substantial, the petitioner shall be  
84 entitled to be reimbursed from the treasury of the commonwealth for reasonable  
85 attorneys' fees and all court costs incurred by him in the defense of the charges contained  
86 in the proceedings. The amount of such reimbursement shall be awarded by the court but  
87 shall not exceed \$20,000 per person, per case.