

HOUSE No. 1119

By Mr. Stanley of Waltham, a petition (accompanied by bill, House, No. 1119) of Thomas M. Stanley relative to the powers of the Secretary of the Commonwealth concerning ethics reform. State Administration and Regulatory Oversight.

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas M. Stanley

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.

PETITION OF:

NAME:

Thomas M. Stanley

DISTRICT/ADDRESS:

9th Middlesex

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

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 **SECTION 1.** Section 41 of chapter 3 OF THE General Laws, as appearing in the 2006 Official
2 Edition, is 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 to 50, 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. (i) Within 30 days after completion of deliberations,
64 the state secretary shall publish a written report of his findings and conclusions.

65 (j) Upon a finding pursuant to an adjudicatory proceeding that there has been a violation
66 of this chapter, the state secretary may issue an order:(1) requiring the violator to cease and
67 desist such violation of sections 39 to 50;(2) requiring the violator to file any report, statement or
68 other information as required by sections 39 to 50;(3) suspending for a specified period or
69 revoking the license and registration of the violator; or(4) requiring the violator to pay a civil
70 penalty of not more than \$10,000 for each violation of this chapter.

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

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