HOUSE DOCKET, NO. 3298 FILED ON: 1/16/2015

HOUSE . . . . . No. 1560

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Rogers

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 a right to counsel in certain eviction cases.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
David M. Rogers	*24th Middlesex*
Kenneth I. Gordon	*21st Middlesex*
Josh S. Cutler	*6th Plymouth*
Jay D. Livingstone	*8th Suffolk*
James Arciero	*2nd Middlesex*
Brian M. Ashe	*2nd Hampden*
Bruce J. Ayers	*1st Norfolk*
Ruth B. Balser	*12th Middlesex*
Christine P. Barber	*34th Middlesex*
Jennifer E. Benson	*37th Middlesex*
Antonio F. D. Cabral	*13th Bristol*
Thomas J. Calter	*12th Plymouth*
Nick Collins	*4th Suffolk*
Brendan P. Crighton	*11th Essex*
Claire D. Cronin	*11th Plymouth*
Michael S. Day	*31st Middlesex*
Marjorie C. Decker	*25th Middlesex*
Daniel M. Donahue	*16th Worcester*

Lori A. Ehrlich	*8th Essex*
Sean Garballey	*23rd Middlesex*
Denise C. Garlick	*13th Norfolk*
Carlos Gonzalez	*10th Hampden*
Patricia A. Haddad	*5th Bristol*
Paul R. Heroux	*2nd Bristol*
Patricia D. Jehlen	*Second Middlesex*
Jay R. Kaufman	*15th Middlesex*
Mary S. Keefe	*15th Worcester*
Kay Khan	*11th Middlesex*
John J. Lawn, Jr.	*10th Middlesex*
Jason M. Lewis	*Fifth Middlesex*
John J. Mahoney	*13th Worcester*
Brian R. Mannal	*2nd Barnstable*
Paul W. Mark	*2nd Berkshire*
Frank A. Moran	*17th Essex*
James J. O'Day	*14th Worcester*
Alice Hanlon Peisch	*14th Norfolk*
Denise Provost	*27th Middlesex*
Byron Rushing	*9th Suffolk*
Daniel J. Ryan	*2nd Suffolk*
Tom Sannicandro	*7th Middlesex*
John W. Scibak	*2nd Hampshire*
Frank I. Smizik	*15th Norfolk*
Benjamin Swan	*11th Hampden*
Timothy J. Toomey, Jr.	*26th Middlesex*
Aaron Vega	*5th Hampden*

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HOUSE . . . . . No. 1560

By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 1560) of David M. Rogers and others relative to establishing a right to counsel in certain eviction cases. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Eighty-Ninth General Court
(2015-2016)

An Act establishing a right to counsel in certain eviction cases.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to provide forthwith indigent persons with the right to counsel in certain eviction cases, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

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. Chapter 239 of the General Laws is hereby amended by adding the
2 following 3 sections:-

3 Section 14. For purposes of sections 15 and 16 the following terms shall, unless the
4 context clearly requires otherwise, have the following meanings:-

5 "Committee", the civil justice committee established in section 15.

6 "Covered proceeding", a proceeding resulting from an action brought pursuant to section
7 1A or a proceeding resulting from an action brought pursuant to this chapter by a person to
8 recover land or tenements based on the following: (a) the lessee of land or tenements or a person
9 holding under him holds possession without right after the determination of a lease by its own

10 limitation or by notice to quit or otherwise; (b) a mortgage of land has been foreclosed by a sale
11 under a power therein contained or otherwise; or (c) a tax title has been foreclosed by decree of
12 the land court.

13 "Designated organization", an organization that provides legal counsel and is identified
14 and designated by the civil justice committee pursuant to section 15.

15 "Eligible individual", a defendant or respondent in a covered proceeding who is an
16 indigent tenant or occupant of a rental dwelling or dwelling unit, the owner and occupant of a
17 dwelling unit owned as a condominium, or the owner and occupant of a 1-family or 2-family
18 dwelling where such dwelling unit or dwelling is located in the commonwealth.

19 "Indigent", a person who is:

20 (i) receiving public assistance under: (1) aid to families with dependent children pursuant
21 to chapter 118; (2) the program of emergency aid for elderly and disabled residents of the
22 commonwealth pursuant to section 1 of chapter 117A; (3) a veterans' benefits programs; (4)
23 Title XVI of the Social Security Act; (5) food stamps; (6) refugee resettlement benefits; or (7)
24 Medicaid, pursuant to 42 U.S.C. section 1396, et seq.;

25 (ii) earning an income, after taxes, that is 125 per cent or less of the current poverty
26 threshold established annually by the Community Services Administration pursuant to section
27 625 of the Economic Opportunity Act, as amended; or

28 (iii) unable to pay the fees and costs of the covered proceeding in which he or she is
29 involved or is unable to do so without depriving himself, herself or his dependents of the
30 necessities of life, including food, shelter and clothing; provided, however an inmate in a

31 correctional facility shall not be adjudged indigent unless the inmate has complied with the
32 procedures set forth in section 29 of chapter 261 o and the court finds that the inmate is incapable
33 of making payments under the plans set forth in said section 29.

34 "Legal counsel" or "counsel", means a lawyer or lawyers licensed to practice law in the
35 Commonwealth of Massachusetts.

36 Section 15. (a) There shall be established within the executive office of housing and
37 economic development, but not under its control, a state agency known as the civil justice
38 committee. The committee shall consist of 6 members appointed by the governor, 2 of whom
39 shall be representatives from the Massachusetts Access to Justice Commission, 2 of whom shall
40 be representatives from the Massachusetts Legal Assistance Corporation and 2 of whom shall be
41 representatives from the Committee for Public Counsel Services. The committee shall be
42 responsible for establishing and implementing a program for the provision of legal services to
43 eligible individuals with respect to covered proceedings.

44 The committee or its designee shall identify and designate organizations eligible to
45 provide legal counsel in accordance with this section and section 16; provided, however the
46 committee shall only designate organizations that:

47 (i) operate pursuant to the standards contained in section 4, Standards for Relations with
48 Clients, and section 6, Standards for Quality Assurance, of the Standards for Providers of Civil
49 Legal Aid established by the American Bar Association;

50 (ii) maintain its principal purpose as furnishing free or low-cost legal services to persons
51 who are unable to afford private legal counsel;

52 (iii) has substantial expertise in housing law and landlord and tenant law and relevant
53 experience in representing low-income tenants in the civil courts of the commonwealth; or

54 (iv) satisfy other criteria established by the civil justice committee.

55 (b) The committee shall establish procedures for the monitoring of the services provided
56 pursuant to this section and section 16 to ensure that designated organizations are providing
57 competent legal services and shall annually review the performance of designated organizations;
58 provided, however, that the committee may decline to renew the designation of any such
59 organization.

60 (c) The committee shall require each designated organization to identify the geographic
61 areas from which the organization shall represent eligible individuals, and for each geographic
62 area, shall maintain a list of such organizations that shall represent such individual.

63 (d) An organization designated by the civil justice committee pursuant to this section
64 shall not be considered to be or have any rights as a state employee.

65 (e) The committee may promulgate any rules or regulations necessary to implement this
66 section or section 16.

67 Section 16. (a) The civil justice committee shall immediately assign a designated
68 organization to represent an eligible individual upon receipt of a request for such services from:

69 (i) the eligible individual;

70 (ii) a judge to whom a covered proceeding has been assigned; or

71 (iii) such designated organization.

72 (b) The designated organization shall assign specific legal counsel to provide legal
73 services to the eligible individual for the covered proceeding.

74 (c) The committee shall cause legal counsel to be paid $50 per hour for representation of
75 an eligible individual pursuant to this section. This rate of compensation shall be reviewed
76 periodically by the civil justice committee.

77 (d) The committee shall set an annual cap on billable hours not in excess of 1,650 hours.
78 Counsel appointed or assigned to represent an eligible individual shall not be paid for any time
79 billed in excess of the annual limit of billable hours. It shall be the responsibility of the counsel
80 appointed or assigned to represent an eligible individual to manage their billable hours. Any
81 counsel who is appointed or assigned to represent an eligible individual shall be prohibited from
82 accepting any new appointment or assignment to represent indigents after that counsel has billed
83 1,350 billable hours during any fiscal year.

84 SECTION 2. The members of the civil justice committee established in section 15 of
85 chapter 239 of the General Law shall be appointed within 90 days of the effective date of this
86 act.

87 SECTION 3. Section 16 of chapter 239 of General Laws shall take effect 180 days after
88 the effective date of this act.