HOUSE DOCKET, NO. 3198 FILED ON: 1/20/2017

HOUSE . . . . . No. 3589

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:	DATE ADDED:
David M. Rogers	*24th Middlesex*	*1/20/2017*
Daniel M. Donahue	*16th Worcester*	*1/20/2017*
Byron Rushing	*9th Suffolk*	*1/20/2017*
Denise Provost	*27th Middlesex*	*1/20/2017*
Jason M. Lewis	*Fifth Middlesex*	*1/20/2017*
Kenneth I. Gordon	*21st Middlesex*	*1/20/2017*
Kay Khan	*11th Middlesex*	*1/20/2017*
Antonio F. D. Cabral	*13th Bristol*	*1/20/2017*
James B. Eldridge	*Middlesex and Worcester*	*1/20/2017*
Mike Connolly	*26th Middlesex*	*1/20/2017*
Claire D. Cronin	*11th Plymouth*	*1/20/2017*
Michael S. Day	*31st Middlesex*	*1/20/2017*
Daniel Cullinane	*12th Suffolk*	*1/20/2017*
Patricia D. Jehlen	*Second Middlesex*	*1/20/2017*
Alice Hanlon Peisch	*14th Norfolk*	*1/20/2017*
Aaron Vega	*5th Hampden*	*1/20/2017*
Patricia A. Haddad	*5th Bristol*	*1/20/2017*
Marjorie C. Decker	*25th Middlesex*	*4/11/2017*

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By Mr. Rogers of Cambridge, a petition (accompanied by bill, House, No. 3589) of David M. Rogers and others establishing a right to counsel in certain eviction cases. The Judiciary.

The Commonwealth of Massachusetts

In the One Hundred and Ninetieth General Court
(2017-2018)

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:

SECTION 1. Chapter 239 of the General Laws is hereby amended by adding the following 3 sections:-

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

"Committee", the civil justice committee established pursuant to section 15.

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

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

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

"Eligible individual", a party in a covered proceeding who is an indigent: (i) tenant or occupant of a rental dwelling or dwelling unit, the owner and occupant of a dwelling unit owned as a condominium, or the owner and occupant of a 1-family or 2-family dwelling where such dwelling unit or dwelling is located in the commonwealth; or (ii) owner or lessor of a rental dwelling or dwelling unit where such dwelling unit or dwelling is located in the commonwealth.

"Indigent", a person who is:

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

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

(iii) unable to pay the fees and costs of the covered proceeding in which the person is a party or is unable to do so without depriving said person or said person's dependents of the necessities of life, including food, shelter and clothing; provided, however that an inmate in a

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

"Legal counsel" or "counsel", means a lawyer licensed to practice law in the commonwealth.

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

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

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

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

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

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

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

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

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

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

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

(i) the eligible individual;

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

(iii) such designated organization.

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

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

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

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

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