SENATE DOCKET, NO. 486 FILED ON: 1/17/2017

SENATE . . . . . No. 903

The Commonwealth of Massachusetts

PRESENTED BY:

Thomas M. McGee

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 foreclosure review division.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	
Thomas M. McGee	*Third Essex*	
Denise Provost	*27th Middlesex*	*2/1/2017*
James B. Eldridge	*Middlesex and Worcester*	*2/1/2017*
Kay Khan	*11th Middlesex*	*2/1/2017*
Elizabeth A. Malia	*11th Suffolk*	*2/3/2017*
Thomas M. Stanley	*9th Middlesex*	*2/3/2017*
Jennifer L. Flanagan	*Worcester and Middlesex*	*2/10/2017*

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SENATE . . . . . No. 903

By Mr. McGee, a petition (accompanied by bill, Senate, No. 903) of Thomas M. McGee, Denise Provost, James B. Eldridge, Kay Khan and other members of the General Court for legislation to establish a foreclosure review division of the Superior Court. The Judiciary.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE SENATE, NO. *871* OF 2015-2016.]

The Commonwealth of Massachusetts

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

An Act establishing a foreclosure review division.

Whereas, The deferred operation of this act would tend to defeat its purpose, which is to facilitate forthwith the just, expeditious and final resolution of cases involving the recent crisis in foreclosures of mortgages on real property, including determinations of real estate title if necessary, 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. The General Laws are hereby amended by inserting after chapter 212 the following chapter:-

CHAPTER 212A

FORECLOSURE REVIEW DIVISION

Section 1. There shall be a special division of the superior court department, known as the fore-closure review division.

Section 2. The foreclosure review division shall have a presiding justice and such other justices as the chief justice of the trial court, in consultation with the chief justice of the superior court department, shall assign from among those justices of the various departments of the trial court with an interest in relevant areas of law.

Section 3. (a) The foreclosure review division shall be divided into not fewer than 4 and not more than 6 sessions statewide, as determined by the chief justice of the trial court in consultation with the chief justice of the superior court department and the presiding justice of the division, based on factors including projected caseloads and on the convenience of litigants.

(b) Each session may hold its sittings in more than 1 location, as appropriate.

(c) The foreclosure review division shall provide online and other materials to assist pro se litigants and shall offer alternative dispute resolution services.

Section 4. There shall be selected, as determined by the chief justice of the trial court in consultation with the chief justice of the superior court department and the presiding justice of the fore-closure review division, a court administrator, deputy court administrators if appropriate, court clerks, clerks for the justices, facilitators for pro se litigants, mediators, title examiners, information technology personnel and any other personnel essential to the expeditious establishment and efficient functioning of the foreclosure review division.

Section 5. (a) Notwithstanding any general or special law to the contrary, the foreclosure review division shall have jurisdiction, concurrently with the other divisions of the superior court department and with the land court department, the housing court department and the district court department, over all actions involving foreclosure of mortgages on residential property whether by action, by sale, by entry or otherwise, including, but not limited to: actions that

concern the validity of a foreclosure; actions of summary process; actions to try title, to quiet title and to re-move cloud on title or actions that may otherwise raise questions regarding title to such property; petitions brought under section 114 of chapter 185 regarding registered land; actions that concern notices regarding a right to cure a deficiency secured by a mortgage and notices regarding intent to foreclose or otherwise to exercise a power of sale; and actions that concern modification of a loan secured by a mortgage, regardless of whether the issue is raised by way of the original com-plaint or by an amendment to the original complaint, by affirmative defense or by counterclaim.

(b) The foreclosure review division shall promptly transmit for recordation, to the registry of deeds of the district in which the land lies, a copy of any final determination affecting title to land. No fee shall be charged for such recordation.

(c) A civil action within the jurisdiction of the foreclosure review division that is pending in an-other court department or another division of the superior court department, may be transferred to the foreclosure review division by any party to that action, as well as sua sponte by a justice of the court department or division in which the action is pending. There shall not be an additional filing fee charged to transfer such a case. An action transferred to the foreclosure review division shall thereafter proceed in that division as though originally entered there.

(d) In a civil action in which another court has dismissed a claim for lack of jurisdiction or denied a claim within the jurisdiction of the division, a party shall be given 30 days after the date of receipt of the notice of dismissal or, in the case of an appeal from the dismissal, 30 days after the date of receipt of notice of the decision, to file the case in the foreclosure review division, regardless of whether the time permitted under the applicable statute of limitations

would have expired at any time from the original commencement of the action to the end of the 30-day period. Any document informing a litigant or his or her attorney of such a dismissal or denial shall include complete information about the right to file the case in the foreclosure review division, together with instructions for doing so.

Section 6. The chief justice of the trial court, in consultation with the chief justice of the superior court department and the presiding justice of the foreclosure review division, may from time to time make alternative or supplemental rules, standing orders and forms of procedure to govern proceedings in the division.

Section 7. (a) There shall be an advisory board to assist the presiding justice and the justices of the foreclosure review division and the division's court administrator.

(b) The advisory board shall consist of the Attorney General or a designee; the executive director of the Massachusetts office of victim assistance; and the following additional members appointed by the Supreme Judicial court: 1 person who has significant experience in court or business administration; 1 person who has significant experience in information technology, in particular, in designing systems to assist members of the public to use information technology effectively; 1 person who has significant experience in promoting judicial economy by assisting pro se claimants in presenting their cases efficiently and effectively; 1 person who has significant experience with mediation programs on complex topics, particularly programs involving cases in which pro se and sophisticated parties have adverse interests; 1 person who has significant experience in real estate title examination in the commonwealth; at least 4 lawyers with significant experience in the practice of various relevant areas of civil law and litigation, including access to justice and banking, bankruptcy, civil rights, consumer rights, landlord-

tenant, real property, secured transactions and securities and securitized trust law and at least half will have represented homeowners in preserving their home from foreclosure or represented consumers.

(c) The advisory board shall choose its chair. The appointed members of that board shall each serve for a term of 3 years or for the remainder of the term of the foreclosure review division, whichever is less.

(d) The board shall advise the presiding justice and the justices of the foreclosure review division and the division's court administrator on matters of judicial and administrative concern including, but not limited to, developments in relevant legal issues, real estate title examination, mediation, assisting pro se litigants and the allocation of resources based on the caseload of each of the division's courts.

Section 8. This chapter shall be implemented by the chief justice of the trial court for a period of 5 years commencing immediately upon passage and shall apply to all cases within the jurisdiction of the foreclosure review division, whether pending in 1 or more departments of the trial court as of the date of enactment or commenced after that date.

SECTION 2. Chapter 212A of the General Laws shall be presumed to renew for an additional 5 year term on January 1 of the 5th year after the effective date of this act and every 5 years there-after unless the legislature acts to repeal this law prior to its next renewal date.

SECTION 3. Chapter 212A of the General Laws is hereby repealed.

SECTION 4. Section 3 shall take effect upon January 1st of the year after the year in which the legislature votes not to renew the foreclosure court division as authorized by section 1 of chapter 212A of the General Laws.