

HOUSE No. 1010

Accompanying the petition of Martin Witte relative to the appointment of auditors and masters, for their duties and powers and for certain procedural regulations. Judiciary (Joint). January 19.

The Commonwealth of Massachusetts.

In the Year One Thousand Nine Hundred and Twenty-Three.

AN ACT

To provide for the Appointment of Auditors and Masters and for their Duties and Powers and for Certain Procedural Regulations.

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. The governor shall, subject to the further
2 provisions hereof, appoint masters and auditors.

1 SECTION 2. Such appointments shall, as in the case
2 of other judicial officers, be made with the advice and
3 consent of the council; provided, that the recommenda-
4 tions and suggestions of the chief justices of the supreme
5 judicial and superior courts shall at all times be sought
6 and considered in conjunction with each proposed ap-
7 pointment.

1 SECTION 3. The number and allotments of such ap-
2 pointees shall be as follows: twenty in the county of
3 Suffolk, fifteen in the county of Middlesex, ten in the
4 county of Norfolk, seven in the county of Essex, three
5 in each of the remaining counties except Dukes and
6 Barnstable, in which latter two counties the number of
7 appointees shall be one for each.

1 SECTION 4. The appointees shall be legal residents
2 and voters in the respective counties to which they are
3 assigned, but nothing herein contained shall prevent the
4 court from designating the appointees of any one county
5 to act in a like capacity in any other county.

1 SECTION 5. In no event shall any person be chosen
2 for appointment to said office unless he or she shall have
3 been duly admitted to practice law in all the courts of
4 this commonwealth and unless such person shall have
5 been in constant practice in this commonwealth for at
6 least ten consecutive years after the date of such admis-
7 sion.

1 SECTION 6. The appointment in each instance shall
2 constitute the appointee both master and auditor.

1 SECTION 7. The appointee in each instance shall be-
2 fore assuming his or her duties take the oath prescribed
3 for judicial officers except for the appropriate substitution
4 of titles.

1 SECTION 8. Each appointee under this act shall serve
2 for a period of seven years from the date of his or her
3 appointment; and all vacancies caused by the death,
4 resignation, removal or expiration of the term of any

5 person or persons appointed under the provisions of this
6 act shall be filled in the manner and according to the
7 provisions applicable to original appointees hereunder.

1 SECTION 9. Notwithstanding the term of office fixed
2 in the next preceding section, any incumbent under this
3 act shall be removable by the tribunals and subject to
4 the procedure now or hereafter relating to and governing
5 the removal of other judicial officers in this common-
6 wealth.

1 SECTION 10. Appointees hereunder shall at all times
2 be subject to designation or assignment by judges of the
3 supreme judicial or the superior courts, and may at the
4 will of any of the judges of either of said courts be or-
5 dered to hear and determine controversies in any county
6 other than the county in which they or any of them
7 were originally appointed to act.

1 SECTION 11. It shall not be unlawful for said incum-
2 bents to continue in the practice of law in so far as such
3 private practice shall not conflict with the proper and
4 faithful discharge of their judicial duties hereunder; pro-
5 vided, however, that any assignment by the court here-
6 under shall, so far as may be required by the court's
7 order, take precedence over all other engagements of
8 said incumbent.

1 SECTION 12. The incumbents hereunder shall, except
2 as herein otherwise provided, conform to and govern
3 themselves and the proceedings before them in accordance
4 with all statutes and rules of court relating to masters
5 and auditors now or hereafter in force.

1 SECTION 13. For the purpose of enforcing attendance
2 of parties and witnesses before them and expediting
3 hearings conducted by them, the incumbents hereunder
4 shall have power to issue *capias* in pursuance to the laws
5 and rules empowering courts to issue like processes.
6 Such master or auditor, as the case may be, shall further
7 be authorized, when cause therefor is shown, to rule
8 that any party before him had neglected unreasonably
9 to prosecute or defend a given action pending before
10 him, and thereupon to find against the party guilty of
11 such neglect; provided, that in such event the master or
12 auditor shall certify the ground for such finding in his
13 report.

1 SECTION 14. Masters and auditors shall have power,
2 when they deem it necessary for the maintenance of
3 orderly conduct by and the enforcement of lawful orders
4 or rulings upon any persons appearing or in attendance
5 before them, to certify to the court as expeditiously as
6 possible the misconduct or disobedience complained of,
7 and to ask that such persons be adjudged in contempt
8 or so dealt with as the court may deem proper in the
9 circumstances; provided, that reasonable notice of the
10 presentation of such application shall be given to such
11 accused person or persons.

1 SECTION 15. Agreements of parties, whether made in
2 writing or orally in open court, for reference of an action
3 or controversy to an auditor shall not be approved or
4 allowed by the court unless such agreement be accom-
5 panied with or include a waiver or waivers of the right of
6 trial by jury; provided, that nothing contained in this
7 section shall be construed to abridge or affect the power
8 and authority of the court to order such references on

9 motion of either party or of its volition at any stage of
10 the proceedings without requiring such waiver.

1 SECTION 16. (a) Whenever in actions at law the right
2 of trial by jury is either expressly or impliedly waived,
3 the procedure prescribed in equity rules thirty, thirty-
4 one and thirty-two of the supreme judicial court relative
5 to hearings before and reports of masters and exceptions
6 to such reports shall in all respects be applicable to and
7 followed with respect to hearings before and reports of
8 auditors and exceptions to such reports; and upon sub-
9 mission of such reports the court shall, in accordance
10 with the practice now followed respecting submission of
11 reports of masters to the court, proceed to dispose of the
12 action upon the report and the questions raised by it in
13 such manner and by such orders, interlocutory or final,
14 as the court may deem appropriate.

15 (b) In all actions at law in which the right of trial by
16 jury is either expressly or impliedly waived, the auditor's
17 report shall as to its findings of fact be final and binding
18 upon the parties unless the same are palpably erroneous
19 as matter of law; and the reports of masters in proceed-
20 ings in equity shall likewise be binding upon the parties
21 with relation to the findings of fact therein contained,
22 unless the same are palpably erroneous as matter of law;
23 provided, however, that nothing herein contained shall be
24 deemed to prevent the court from recommitting or dis-
25 charging either form of report whenever such course
26 may seem advisable.

1 SECTION 17. Notwithstanding specific prayers in a bill
2 in equity, the master shall, when feasible, in addition to
3 other features of his report, incorporate therein recom-
4 mendations or suggestions as to the disposition of the

5 bill which in his judgment would most adequately and
6 comprehensively dispose of all the issues raised by the
7 pleadings and disclosed by the evidence of the parties.

1 SECTION 18. The salary of such masters and auditors
2 for all services rendered by them in either or both
3 capacities shall be five thousand dollars per annum to
4 each appointee, payable in equal monthly instalments;
5 provided, that in the event of the transfer or assignment
6 of any appointee from the county in which he was ap-
7 pointed to a sitting in any other county, or if it shall be-
8 come necessary for the master or auditor to travel into
9 another county in connection with the hearings being
10 conducted by them, or either of them, then and in either
11 such event he shall file with his report a certificate of his
12 actual expenses, which if and when approved by any
13 judge of the court from which the given reference issued
14 shall be paid in addition to and along with the next
15 succeeding instalment of salary.

1 SECTION 19. All references made before this act shall
2 take effect shall be and remain in full force and effect.

1 SECTION 20. All acts and parts of acts inconsistent
2 with the provisions of this act are hereby repealed.

1 SECTION 21. This act shall take effect upon its pas-
2 sage.