

HOUSE No. 2959

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, May 3, 1956.

The committee on the Judiciary, to whom were referred the petition (accompanied by bill, House, No. 438) of Martha Ware for legislation relative to entry fees in the Superior Court for causes removed from the district courts; the petition (accompanied by bill, House, No. 1968) of John E. Murphy that provision be made for trials by juries of six in the municipal court of the city of Boston; the petition (accompanied by bill, House, No. 1977) of John F. Zamparelli for legislation to establish the number of justices in the First District Court of Eastern Middlesex; the petition (accompanied by bill, House, No. 2194) of John E. Murphy for trials in civil actions by juries of six in the district courts of Essex County; the petition (accompanied by bill, House, No. 2195) of John E. Murphy relative to trials by juries of six in the district courts and on the message from His Excellency the Governor transmitting the report of the Judicial Survey Commission appointed by him to investigate the administration of justice in the courts of the Commonwealth (House, No. 2620, pages 16-29), report the accompanying bill (House, No. 2959).

For the committee,

JOSEPH P. GRAHAM.

Representatives DONLAN of Boston, MURPHY of Peabody and CURTISS of Sheffield dissenting.

The Commonwealth of Massachusetts

In the Year One Thousand Nine Hundred and Fifty-Six.

AN ACT PROVIDING FOR THE REORGANIZATION OF THE DISTRICT COURTS AND THE EXTENSION OF FULL-TIME JUDICIAL SERVICE.

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 218 of the General Laws is hereby
2 amended by striking out section 6, as most recently
3 amended by chapter 560 of the acts of 1952, and in-
4 serting in place thereof the following section: —

5 *Section 6.* Each district court other than the mu-
6 nicipal court of the city of Boston shall have one justice,
7 except that the central district court of Worcester, dis-
8 trict court of Springfield, municipal court of the Rox-
9 bury district, first district court of eastern Middlesex,
10 and third district court of eastern Middlesex shall have
11 two justices each. The senior justice shall be the first
12 justice of the court. Citations, orders of notice, writs,
13 executions and all other processes issued by the clerk of
14 the court shall bear the teste of the first justice thereof.

15 Except in the municipal court of the city of Boston,
16 there shall be two special justices in every district court
17 having two justices and one special justice in every
18 other district court. No vacancy in the office of special
19 justice shall be filled unless and until the number of
20 special justices for such court shall be less than the
21 number provided therefor in this section.

22 Special justices of the district courts other than the
23 municipal court of the city of Boston shall be paid by
24 the county in which they sit at the rate by the day at
25 which special justices were paid in the same court on
26 December thirty-first of the year nineteen hundred and

27 fifty-six. Special justices of the Boston juvenile court
28 shall be paid by the county fifteen dollars for each day's
29 services, or at the rate by the day of the salary of the
30 justice of the same court, whichever is the greater amount.
31 For each day's service so paid for in excess of thirty days
32 in any court in any one year there shall be deducted by
33 the county treasurer from the salary of the justice who
34 absents himself from said court one day's compensation
35 at the rate by the day of the salary of said justice, ex-
36 cept for services of the special justice in holding simul-
37 taneous sessions; provided, however, that if a justice
38 is absent, due to his illness or physical disability, for
39 a period not exceeding thirty days in any year, in addi-
40 tion to said thirty days, he shall be deemed to be on
41 sick leave, and no such deduction shall be made; such
42 thirty-day sick leave or any portion thereof not used in
43 any year may be accumulated, but shall in any event,
44 not exceed ninety days in any consecutive three-year
45 period; and provided, further, that if a justice is absent
46 due to an assignment on or by the administrative com-
47 mittee, no such deduction shall be made therefor.

1 SECTION 1A. Said chapter 218 is hereby further
2 amended by inserting after section 56 the following four
3 sections: —

4 *Section 56A.* After the entry of a civil action in the
5 municipal court of the city of Boston or the central dis-
6 trict court of Worcester, either party may, within the
7 time provided or allowed for the filing of an answer,
8 claim a trial by a jury of six.

9 *Section 56B.* Trials by such juries in said district
10 courts shall proceed in accordance with the provisions
11 of law applicable to trials by jury in the superior court,
12 except that the number of peremptory challenges shall
13 be one half the number provided by section twenty-nine
14 of chapter two hundred and thirty-four. Jurors shall
15 be drawn from the pool of jurors available for the jury
16 sessions in civil cases in the superior court for Suffolk
17 county or Worcester county, as the case may be. The
18 chief justice of the municipal court of the city of Boston

19 or the first justice of the central district court of Worces-
20 ter shall arrange jury sessions in their respective courts
21 and assign justices thereto, to the end that there may
22 be a speedy disposition of cases tried by jury in said
23 courts.

24 *Section 56C.* In the event of a trial by jury in the
25 municipal court of the city of Boston or the central dis-
26 trict court of Worcester, review may be had directly by
27 the supreme judicial court, by a bill of exceptions, appeal
28 or report, in the same manner provided for trials by jury
29 in the superior court.

30 *Section 56D.* If either party refuses to agree to trial
31 by a jury of six in the municipal court of the city of Boston
32 or the central district court of Worcester, he may, in
33 accordance with the provisions of section one hundred
34 and two B or sections one hundred and four to one hun-
35 dred and seven, inclusive, of chapter two hundred and
36 thirty-one, remove the case for trial in the superior court.

1 SECTION 2. Said chapter 218 is hereby further
2 amended by striking out section 77A, as most recently
3 amended by chapter 334 of the acts of 1955, and insert-
4 ing in place thereof the following section:—

5 *Section 77A.* The salaries of the justices of the dis-
6 trict court of Barnstable, district court of central Berk-
7 shire, first district court of Bristol, second district court
8 of Bristol, third district court of Bristol, fourth district
9 court of Bristol, district court of Lawrence, first district
10 court of Essex, district court of southern Essex, central
11 district court of northern Essex, district court of Spring-
12 field, district court of western Hampden, district court
13 of Hampshire, first district court of eastern Middlesex,
14 second district court of eastern Middlesex, third district
15 court of eastern Middlesex, first district court of south-
16 ern Middlesex, district court of Lowell, district court of
17 Somerville, municipal court of Brookline, district court
18 of northern Norfolk, district court of East Norfolk,
19 district court of Brockton, municipal court of the

20 Brighton district, municipal court of the Charlestown
21 district, district court of Chelsea, municipal court of the
22 Dorchester district, East Boston district court, municipi-
23 pal court of the Roxbury district, municipal court of the
24 South Boston district, municipal court of the West Rox-
25 bury district, central district court of Worcester, first
26 district court of northern Worcester, and district court
27 of Fitchburg shall be twelve thousand dollars each. The
28 justices and clerks of said courts shall devote their entire
29 time during ordinary business hours to their respective
30 duties and shall not, directly or indirectly, engage in the
31 practice of law. Each of said justices shall sit in his
32 own court and, in addition, perform such other duties as
33 district court justices as the administrative committee
34 may from time to time assign to him.

35 Whenever a full-time justice of a district court in one
36 county shall sit by assignment of the administrative com-
37 mittee in a district court in another county, such other
38 county shall reimburse the first county of a pro rata basis
39 for the salary of such justice for the time that he sits in
40 such other county, and for his expenses thereby incurred.

41 Except in the municipal court of the city of Boston,
42 the second district court of Barnstable, and the district
43 court of Dukes county and the district court of Nan-
44 tucket, no justice or special justice other than a full-time
45 justice shall hear and determine any civil cases other
46 than supplementary proceedings, summary proceedings,
47 small claims, and proceedings relating to juveniles and
48 insane persons in any district court without the authori-
49 zation of the administrative committee of the district
50 courts. The administrative committee shall give such
51 authorization for specified limited periods of time in
52 specified district courts and only as the public con-
53 venience may require, and may give such authorization
54 by general rule applicable to the hearing and determina-
55 tion of interlocutory proceedings, or whenever full-time
56 justices assigned to hear such civil cases are absent or
57 otherwise unable to sit. No such authorization shall be

58 required for the rehearing of matters of law arising in
59 civil causes by any justice assigned to the appellate
60 division of a district court.

1 SECTION 3. Said chapter 218 is hereby further
2 amended by striking out section 78, as most recently
3 amended by section 1 of chapter 741 of the acts of 1955,
4 and inserting in place thereof the following section: —
5 *Section 78.* The salary of the justice of the district
6 court of Newton shall be seventy-four hundred dollars.
7 The salary of the justice of the fourth district court of
8 eastern Middlesex shall be sixty-six hundred dollars.
9 The salary of the justice of each of the following district
10 courts shall be six thousand dollars: second district
11 court of Plymouth, district court of Holyoke, first dis-
12 trict court of southern Worcester; the salary of the jus-
13 tice of each of the following district courts shall be fifty-
14 five hundred dollars: district court of eastern Essex,
15 district court of Newburyport, district court of western
16 Norfolk, district court of Chicopee, district court of
17 central Middlesex, district court of Franklin, district
18 court of Peabody; the salary of the justice of each of
19 the following district courts shall be forty-nine hundred
20 dollars: fourth district court of Plymouth, district court
21 of Marlborough, third district court of Plymouth; the
22 salary of the justice of each of the following district
23 courts shall be forty-six hundred and forty dollars: first
24 district court of northern Middlesex, district court of
25 Leominster, district court of northern Berkshire, district
26 court of Natick, district court of southern Norfolk, dis-
27 trict court of western Worcester, third district court of
28 southern Worcester, district court of eastern Hampden,
29 second district court of eastern Worcester, second dis-
30 trict court of Essex, second district court of southern
31 Worcester, fourth district court of Berkshire, first dis-
32 trict court of eastern Worcester, district court of eastern
33 Hampshire, district court of southern Berkshire; the
34 salary of the justice of each of the following district
35 courts shall be thirty-nine hundred dollars: second dis-

36 trict court of Barnstable, district court of Lee, third
37 district court of Essex, district court of Winchendon,
38 district court of eastern Franklin, district court of
39 Williamstown. The salary of the justice of the district
40 court of Dukes county shall be forty-three hundred and
41 forty dollars and the salary of the justice of the district
42 court of Nantucket shall be thirty-five hundred dollars.

1 SECTION 4. The first paragraph of section 43A of
2 said chapter 218, as amended by chapter 101 of the
3 acts of 1943, is hereby further amended by adding at
4 the end the following sentence:— The administrative
5 committee may from time to time report to the gov-
6 ernor and to the general court its recommendations,
7 with drafts of legislation necessary to carry such recom-
8 mendations into effect; relative to any matters affecting
9 the administration of the district courts.

1 SECTION 5. Section 15 of said chapter 218, as most
2 recently amended by section 1 of chapter 460 of the
3 acts of 1947, is hereby further amended by inserting
4 after the first paragraph the following paragraph:—
5 Where a full-time justice of a district court is assigned
6 to another court by the administrative committee of the
7 district courts to hear and determine any civil cases, the
8 administrative committee shall, except where such times
9 are established by law, prescribe the times for holding
10 such civil trials in said other court.

1 SECTION 6. Said chapter 218 is hereby further
2 amended by striking out sections 79 and 80.

1 SECTION 7. Section 81 of said chapter 218, as amended
2 by section 1 of chapter 296 of the acts of 1939, is hereby
3 further amended by adding at the end of the first sen-
4 tence the following words:— ; and provided, further,
5 that the full-time district court justices shall quarterly
6 receive from their respective counties, upon the certifi-
7 cate of the administrative committee, the amount of the

8 expense incurred by them in the discharge of their duties
9 assigned to them outside their own courts.

1 SECTION 8. Said chapter 218 is hereby further
2 amended by striking out section 82.

1 SECTION 9. Section 65B of chapter 32 of the General
2 Laws, as most recently amended by chapter 398 of the
3 acts of 1943, is hereby further amended by inserting
4 after the word "resignation", in line 10, the words:—
5 or during the period of ten years next preceding Decem-
6 ber thirty-first of the year nineteen hundred and fifty-six,
7 —so as to read as follows:— *Section 65B.* A special
8 justice of a district court, including the municipal court
9 of the city of Boston, who shall be retired under Article
10 LVIII of the Amendments to the Constitution, or a
11 special justice thereof sixty-five years of age or over who
12 shall resign his office, after in either case having served
13 as a special justice for at least ten years, shall be entitled
14 to receive a pension for life at an annual rate equal to
15 three fourths of his average yearly earnings as special
16 justice during the period of ten years next preceding
17 such retirement or resignation or during the period of
18 ten years next preceding December thirty-first of the
19 year nineteen hundred and fifty-six or at an annual rate
20 equal to three fourths of his average yearly earnings as
21 special justice during the entire period of his service in
22 said office, whichever is the higher rate, but not exceed-
23 ing in any event an annual rate equal to three fourths
24 of the annual rate of salary of the justice of his court or,
25 in the case of the municipal court of the city of Boston,
26 three fourths of the annual rate of salary of an associate
27 justice of said court, payable from the same source and
28 in the same manner as the salary of such justice or
29 associate justice, as the case may be.

1 SECTION 10. Chapter 35 of the General Laws is
2 amended by striking out section 49, as most recently
3 amended by section 2 of chapter 611 of the acts of 1951,
4 and inserting in place thereof the following section:—

5 *Section 49.* Every office and position whereof the
6 salary is wholly payable from the treasury of one or
7 more counties, or from funds administered by and
8 through county officials, including the officer described
9 in the first sentence of section seventy-six of chapter
10 two hundred and twenty-one, shall be classified by the
11 board in the manner provided by sections forty-eight
12 to fifty-six, inclusive, and every such office and position,
13 now existing or hereafter established, shall be allocated
14 by the board to its proper place in such classification,
15 excluding the offices of county commissioners, the clerk
16 and assistant clerks of the superior court for civil busi-
17 ness in the county of Suffolk, the clerk and assistant
18 clerks of the superior court for criminal business in the
19 county of Suffolk, clerks and assistant clerks of the mu-
20 nicipal court of the city of Boston, clerks and assistant
21 clerks of the courts other than the clerks and assistant
22 clerks of district courts, and excluding the assistant clerk
23 and second assistant clerk of the supreme judicial court
24 for the county of Suffolk, the register of deeds and
25 assistant registers of deeds for the county of Suffolk,
26 official stenographers, additional stenographers and tem-
27 porary stenographers of the superior court in the county
28 of Suffolk, justices and special justices of the district
29 courts, the messenger of the superior court in the county
30 of Suffolk, the secretary and assistant secretary of the
31 municipal court of the city of Boston, and excluding
32 other offices and positions filled by appointment of the
33 governor with the advice and consent of the council,
34 court officers appointed in Suffolk county under section
35 seventy of said chapter two hundred and twenty-one,
36 court officers in attendance upon the municipal court of
37 the city of Boston, court officers in attendance upon the
38 probate court in the county of Essex and probation
39 officers. Offices and positions in the service of any de-
40 partment, board, school or hospital principally supported
41 by the funds of the county or counties, or in the service
42 of a hospital district established under sections seventy-
43 eight to ninety-one, inclusive, of chapter one hundred
44 and eleven, shall likewise be subject to classification as

45 aforesaid. The word "salary", as used in this section,
46 shall include compensation, however payable; but noth-
47 ing in sections forty-eight to fifty-six, inclusive, and
48 nothing done under authority thereof, shall prevent any
49 person from continuing to receive from a county such
50 compensation as is fixed under authority of other pro-
51 visions of law or as is expressly established by law.

1 SECTION 11. Notwithstanding any other provisions
2 of law, the salary in force on December thirty-first,
3 nineteen hundred and fifty-six, of each of the clerks and
4 assistant clerks of district courts who are, by section
5 ten, first made subject to the provisions of section forty-
6 nine of chapter thirty-five of the General Laws, shall
7 continue in force until his office or position is classified
8 as provided in said section forty-nine, and shall not be
9 reduced by such classification so long as he shall hold
10 such office or position. This act shall not affect the
11 tenure of office of any justice or special justice in office
12 when it shall take effect. So far as the provisions of
13 this act are the same as those of previous law, they shall
14 be deemed to be a continuation thereof.

1 SECTION 12. Section 17 of said chapter 218, as ap-
2 pearing in the Tercentenary Edition, is hereby amended
3 by adding at the end the following sentence:— No jus-
4 tice or special justice shall hear or try any case or pro-
5 ceeding in any district court of the commonwealth, if he
6 shall know that a partner or office associate of his has
7 been directly or indirectly retained or employed as attor-
8 ney in such case or proceeding.

1 SECTION 13. Notwithstanding any other provisions
2 of law, the annual rate of the pension for life provided
3 by the first sentence of section sixty-five A of chapter
4 thirty-two of the General Laws for a justice of a dis-
5 trict court in office immediately prior to the effective
6 date of this act and not theretofore required to devote
7 his entire time during ordinary business hours to his

8 duties as such justice, who is first made a full-time jus-
9 tice by the provisions of this act, and shall thereafter
10 resign his office in accordance with the provisions of said
11 section sixty-five A, shall be equal to three fourths of
12 his average annual salary as justice during the ten years
13 next preceding his resignation.

1 SECTION 14. No vacancy in the office of justice of
2 any district court listed in section seventy-eight of chap-
3 ter two hundred and eighteen of the General Laws, as
4 amended by section three of this act, shall be filled ex-
5 cept upon the written recommendation by the adminis-
6 trative committee of the district courts that the filling
7 of such vacancy is necessary for the proper administra-
8 tion of justice. In the event of such vacancy sittings
9 shall continue to be held in the court in which the va-
10 cancy exists by such justice or justices as the administra-
11 tive committee may assign for the purpose.

1 SECTION 15. The second sentence of section seventy-
2 seven A of chapter two hundred and eighteen of the
3 General Laws, as appearing in section two of this act,
4 shall not apply to any justice of a district court holding
5 office on the effective date of this act, and thereupon
6 made a full-time justice by the provisions of said section
7 seventy-seven A, as so appearing, until July first, nine-
8 teen hundred and fifty-seven.

1 SECTION 16. So much of section one of this act as
2 limits the number of special justices in district courts
3 shall take effect on the thirtieth day next after it has
4 become a law; section one A of this act shall take effect
5 on July first, nineteen hundred and fifty-seven, and shall
6 apply to actions filed on or after said date, and shall be-
7 come inoperative on July first, nineteen hundred and
8 sixty; and the remaining provisions and sections of this
9 act shall take effect on January first, nineteen hundred
10 and fifty-seven.

