

HOUSE No. 1619

The Commonwealth of Massachusetts

PRESENTED BY:

Eugene L. O'Flaherty

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 passage of the accompanying bill:

An Act relative to creation of the office of Senior Justice in the Appeals Court and the Trial Court.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Eugene L. O'Flaherty	2nd Suffolk

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO CREATION OF THE OFFICE OF SENIOR JUSTICE IN THE APPEALS COURT AND THE TRIAL COURT.

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 32 of the General Laws is hereby amended by striking out sections 65F and 65G,
2 both as most recently amended by section 552 of chapter 133 of the acts of 1992, and inserting in place
3 thereof the following two sections:

4 Section 65F. A chief justice, associate justice or judge of the appeals court or of the trial court, who is
5 retired from his office may notify the chief justice of the appeals court or the chief justice for
6 administration and management of the trial court, whichever is appropriate, in writing, within eighteen
7 months from the date of his retirement, that he wishes his name to be placed upon the list of senior
8 justices of the appeals court or senior justices of the trial court. The chief justice of the appeals court shall
9 place the name of any such chief justice or associate justice on the list of senior justices of the appeals
10 court, and the chief justice for administration and management shall place the name of any judge of the
11 trial court on the list of senior justices of the trial court.

12 Any retired chief justice; associate justice, or judge who elects to place his name upon the list of senior
13 justices or any surviving spouse of such chief justice, associate justice, or judge shall be entitled to the
14 same pension and all other benefits which he or his surviving spouse would have been entitled to receive

15 if he had retired without his name having been placed on such list, notwithstanding any other law to the
16 contrary, and a vacancy shall exist in the judicial office previously occupied by such retired chief justice,
17 associate justice or judge prior to such retirement.

18 A retired chief justice, associate justice or judge of the appeals court or of the trial court whose name has
19 been placed on the list of senior justices shall be eligible to perform judicial duties only as provided in
20 section sixteen of chapter two hundred eleven A or section fourteen of chapter two hundred eleven B of
21 the general laws, as appropriate.

22 If any such senior justice no longer wishes to be eligible to perform judicial duties pursuant to section
23 sixteen of said chapter two hundred eleven A, or pursuant to section fourteen of said chapter two hundred
24 eleven B, he may at any time after having his name placed upon said list resign his office.

25 A retired chief justice, associate justice or judge of the appeals court, or the trial court, while eligible to
26 perform judicial duties, shall not engage in the practice of law directly or indirectly, and shall not hold
27 any office which is incompatible with holding the office of justice or judge of the court of which he is on
28 the senior justice list under the provisions of Article II of Chapter VI of Part the Second of the
29 Constitution of the Commonwealth of Article VIII of the Amendments thereto.

30 Section 65FF. In the event that a justice or judge designated a senior justice has not received a pension or
31 retirement allowance pursuant to section sixty-five A or

32 sixty-five D of this chapter, after attaining seventy years of age, because said justice or judge has not
33 served continuously for at least ten years, said senior justice may receive a total annual per diem
34 compensation equivalent to the current salary of an associate justice or judge of the court said justice or
35 judge was retired from pursuant to Article 1 of Part 2, Chapter 3 of the Constitution. Such a senior justice
36 shall be entitled to accrue and continue to contribute to his pension eligibility, pursuant to paragraph (b)
37 of section sixty-five D of this chapter, until he is eligible to receive a pension or retirement allowance

38 pursuant to said section sixty-five D. During the period of time a senior justice is subject to the
39 provisions of said paragraph (b) of said section sixty-five
40 D, he shall be entitled to earn the same vacation and sick leave benefits of a associate justice of the court
41 from when he retired. When such a senior justice achieves a minimum of ten years of continuous service
42 and is eligible for a pension or retirement allowance he shall be subject to the provisions of section 65F of
43 this chapter.

44 SECTION 2. Chapter 211A of the General Laws, as so appearing, is hereby amended by striking out
45 section 16, and inserting in place thereof the following sections:

46 SECTION 16. A retired chief justice or associate justice of the appeals court, shall become eligible to be
47 a senior justice upon the date of such retirement and for eighteen months thereafter. Any such justice
48 shall notify the chief justice of the Appeals Court not less than four months before assuming senior justice
49 status. A senior justice shall be designated and assigned by the chief justice of the appeals court to
50 perform, during his term of eligibility, such of the duties of the office of associate justice of the appeals
51 court as may be requested of him and which he is willing to undertake. Such senior justice may also be
52 designated and assigned by the chief justice of the appeals court to perform, during his term of eligibility,
53 such of the duties of judge of any lower court as may be requested of him and which he is willing to
54 undertake provided that no single assignment shall be for a term of longer than ninety days.

55 In performing the services requested of him, a senior justice shall exercise all judicial power and authority
56 pertaining to the office in which he acts, in respect of matters to which he is designed to act, and the fact
57 of such service shall be stated on the records of the court, but need not be separately stated in the record
58 or docket of any particular cause or proceeding. Service under the provisions of this section shall not be
59 counted in determining the number of offices authorized or required for any court, on which a senior
60 justice serves, by any applicable statute.

61 A senior justice so serving shall receive compensation on a per diem basis. The per diem rate shall be
62 determined by dividing one two hundred twentieths (220) into the then current salary of such justice of
63 the appeals court. Said per diem rate shall be paid to a senior justice for each day he shall be assigned to
64 the court and such compensation shall be in addition to any other compensation or benefits the justice
65 shall be entitled to as a retiree under the provisions of section

66 sixty-five A or section sixty-five D of chapter thirty two of the general laws. Notwithstanding any
67 general or special law to the contrary, the total annual per diem compensation paid to a senior justice,
68 when combined with his annual pension or retirement allowance, shall not exceed one hundred and ten
69 percent of the then current salary of a justice of the appeals court. The per diem compensation paid to a
70 senior justice shall be subject to taxation pursuant to regular federal and state taxation. The per diem rate
71 of compensation shall be paid from judiciary appropriated funds and at the same intervals as paid to a
72 regular justice of the court.

73 Such senior justice shall be entitled to all other benefits of a regular incumbent of the appeals court and
74 shall be reimbursed for expenses incurred while performing such services at any place other than his place
75 of residence. While so serving he shall be entitled to receive such staff support, clerical assistance and
76 facilities as are customarily available to judges of the court on which he serves.

77 A senior justice shall be eligible for designation and assignment by the chief justice of the appeals court
78 until he attains the age of seventy six years. Thereafter senior justices may apply to a committee of
79 appeals court justices, designated by the chief justice, for consideration of continued service as a senior
80 justice beyond age seventy six years. Said committee after making its determination, shall recommend to
81 the chief justice which senior justices are willing, and able, to be designated and assigned by said chief
82 justice. Continued eligibility for service shall be determined each year after a senior justice attains the
83 age of seventy six years.

84 Section 16A. During the temporary disability of the chief justice or an associate justice of the appeals
85 court, a majority of the justices of the supreme judicial court may designate a justice appointed to the trial
86 court to perform such duties of the office of associate justice of the appeals court as may be necessary to
87 ensure the speedy dispatch of judicial business; provided, however, that any such trial court justice so
88 appointed shall receive a salary commensurate with the salary of the justice or chief justice of the appeals
89 court who is so disabled; and, provided further, that nothing contained herein shall be construed to limit
90 the right of such disabled justice to receive his full salary, health or disability benefits or retirement
91 benefits if otherwise provided by law.

92 SECTION 3. Chapter 211B of the General Laws, as so appearing, is hereby amended by striking out
93 section 14 and inserting in place thereof the following section:

94 Section 14. A retired justice of the trial court shall become eligible to be a senior justice upon the date of
95 such retirement and for eighteen months thereafter. Any such justice shall notify the chief justice for
96 administration and management not less than four months before assuming senior justice status. A senior
97 justice shall be designated and assigned by the chief justice for administration and management to
98 perform, during his term of eligibility, such of the duties of the office of a justice of the trial court as may
99 be requested of him and which he is willing to undertake provided that no single assignment shall be for a
100 term of longer than ninety days.

101 In performing the services requested of him, a senior justice shall exercise all judicial power and authority
102 pertaining to the office in which he acts, in respect of matters to which he is designated to act, and the fact
103 of such service shall be stated on the records of the court, but need not be separately stated in the record
104 or docket of any particular cause or proceeding. Service under the provisions of this section shall not be
105 counted in determining the number of offices authorized or required for any court, on which a senior
106 justice serves, by any applicable statute.

107 A senior justice so serving shall receive compensation on a per diem basis. The per diem rate shall be
108 determined by dividing one two hundred twentieths (220) into the then current salary of a justice of the
109 trial court. Said per diem rate shall be paid to a senior justice for each day he shall sit in the trial court
110 and such compensation shall be in addition to any other compensation or benefits the justice shall be
111 entitled to as a retiree under the provisions of section sixty-five A or section sixty-five D of chapter thirty
112 two of the general laws. Notwithstanding any general or special law to the contrary, the total annual per
113 diem compensation paid to a senior justice, when combined with his annual pension or retirement
114 allowance, shall not exceed one hundred and ten percent of the then current salary of a justice of the trial
115 court. The per diem compensation paid to a senior justice shall be subject to taxation pursuant to regular
116 federal and state taxation. The per diem rate of compensation shall be paid from Judiciary appropriated
117 funds and at the same intervals as paid to a regular justice of the trial court.

118 Such senior justice shall be entitled to all other benefits of a regular incumbent of the trial court and shall
119 be reimbursed for expenses incurred while performing such services at any place other than his place of
120 residence. While so serving he shall be entitled to receive such staff support, clerical assistance and
121 facilities as are customarily available to judges of the court on which he serves.

122 A senior justice shall be eligible for designation and assignment by the chief justice for administration and
123 management until he attains the age of seventy six years. Thereafter senior justices may apply to a
124 committee of trial court justices, designated by said chief justice, for consideration of continued service as
125 a senior justice beyond age seventy six years. Said committee after making its determination, shall
126 recommend to the chief justice which senior justices are willing, and able, to be designated and assigned
127 by said chief justice. Continued eligibility for service shall be determined each year after a senior justice
128 attains the age of seventy six years.

129 Trainor/J.T. pay raises/senior justice 12-31-08