

HOUSE No. 2642

The Commonwealth of Massachusetts

PRESENTED BY:

Sarah K. Peake

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 providing for local aid enhancement.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Sarah K. Peake</i>	<i>4th Barnstable</i>	<i>1/20/2017</i>

HOUSE No. 2642

By Ms. Peake of Provincetown, a petition (accompanied by bill, House, No. 2642) of Sarah K. Peake relative to room occupancy excise tax on vacation rental of houses, apartments, cottages or condominiums. Revenue.

The Commonwealth of Massachusetts

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

An Act providing for local aid enhancement.

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 64G of the General Laws, as appearing in the 2014 official edition,
2 is hereby amended by striking it out in its entirety and inserting in place thereof the following:-

3

4 Section 1. As used in this chapter the following words shall, unless the context requires
5 otherwise, have the following meanings:

6 (a) “Bed and breakfast establishment”, a house where 1 or more rooms are let and a
7 breakfast is included in the rent.

8 (b) “Commissioner”, the commissioner of revenue.

9 (c) “Hosting platform”, any person who provides a service through any website,
10 software, online-enabled application, mobile phone application, or some other similar process
11 which (i) provides a means for an operator to advertise, list, or offer the use of any

12 accommodation subject to the excise under this chapter in exchange for rent; (ii) provides a
13 means for an operator to collect the payment of rent on any accommodation; and (iii) provides a
14 means for a person to arrange, book, reserve or rent a transient accommodation.

15 (d) “Hotel”, any building used for the feeding and lodging of guests licensed or required
16 to be licensed under the provisions of section 6 of chapter 140.

17 (e) “Lodging house”, a house where lodgings are let to four or more persons not within
18 the second degree of kindred to the person conducting it, licensed or required to be licensed
19 under section 23 of chapter 140.

20 (f) “Motel”, any building or portion thereof, other than a hotel or lodging house, in which
21 persons are lodged for hire with or without meals and which is licensed or required to be licensed
22 under the provisions of section 32B of chapter 140, or is a private club.

23 (g) “Operator”, any person operating a bed and breakfast establishment, hotel, lodging
24 house, transient accommodation or motel in the commonwealth including, but not limited to, the
25 owner or proprietor of such premises, the lessee, sublessee, mortgagee in possession, licensee or
26 any other person otherwise operating such bed and breakfast establishment, hotel, lodging house,
27 transient accommodation or motel.

28 (h) “Operator’s agent”, any person, including but not limited to a property manager,
29 property management company or real estate agent who is not a hosting platform and on behalf
30 of an operator of a bed and breakfast establishment, lodging house or transient accommodation:
31 (i) manages the operation or upkeep of a property offered for rent; or (ii) books reservations at a
32 property offered for rent.

33 (i) "Occupancy", the use or possession, or the right to the use or possession, of any room
34 or rooms in a bed and breakfast establishment, hotel, lodging house, transient accommodation or
35 motel designed and normally used for sleeping and living purposes, or the right to the use or
36 possession of the furnishings or the services and accommodations, including breakfast in a bed
37 and breakfast establishment, accompanying the use and possession of such room or rooms, for a
38 period of 31 consecutive calendar days or less, regardless of whether such use and possession is
39 as a lessee, tenant, guest or licensee.

40 (j) "Occupant", a person who, for rent, uses, possesses or has a right to use or possess,
41 any room or rooms in a bed and breakfast establishment, hotel, lodging house, transient
42 accommodation or motel under any lease, concession, permit, right of access, license or
43 agreement.

44 (k) "Person", includes an individual, partnership, trust or association, with or without
45 transferable shares, joint-stock company, corporation, society, club, organization, institution,
46 estate, receiver, trustee, assignee or referee and any other person acting in a fiduciary or
47 representative capacity, whether appointed by a court or otherwise, or any combination of
48 individuals acting as a unit.

49 (l) "Rent", the consideration received for occupancy valued in money, whether received
50 in money or otherwise, including all receipts, cash, credits and property or services of any kind
51 or nature and also any amount for which credit is allowed by the operator to the occupant
52 without any deduction therefrom whatsoever.

53 (m) "Transient accommodation" any vacation, leisure or short-term rental
54 accommodation offering occupancy in exchange for rent, including but not limited to an

55 apartment, single or multiple family housing, cottage, condominium, time-share unit or any
56 furnished residential accommodation within any area zoned for residential or commercial use
57 that is not a hotel, motel, lodging house, or bed and breakfast establishment.

58

59 Section 2. The provisions of this chapter shall not be construed to include (a) lodging
60 accommodations at federal, state or municipal institutions, except as provided for in clause (b) of
61 this paragraph; (b) lodging accommodations, including dormitories, at religious, charitable,
62 philanthropic and public and private educational institutions; provided, however, that this
63 exemption shall not apply to accommodations provided in a manner ancillary to the achievement
64 of the religious, charitable, philanthropic or educational purposes of such institutions; and
65 provided further, that lodging accommodations provided by a public or private college or
66 university that are not student dormitories or faculty housing and that are available to the general
67 public shall be considered ancillary to the educational purpose of such educational institutions;
68 (c) privately owned and operated convalescent homes or homes for the aged, infirm, indigent or
69 chronically ill; (d) religious or charitable homes for the aged, infirm, indigent or chronically ill;
70 (e) summer camps for children 18 years of age or under or developmentally disabled individuals;
71 provided, however, that such summer camp which offers its facilities off-season to individuals
72 60 years of age or over for a period not to exceed 31 days in any calendar year shall not lose its
73 exemption hereunder; (f) lodging accommodations provided to seasonal employees by
74 employers; and (g) tenancies at will or month to month leases.

75

76 For the purposes of this section a developmentally disabled individual shall mean an
77 individual who has a severe chronic disability which:

78 (A) is attributable to a mental or physical impairment or combination of mental and
79 physical impairments;

80 (B) is likely to continue indefinitely;

81 (C) results in substantial functional limitations in three or more of the following areas of
82 major life activity: (i) self-care; (ii) receptive and expressive language; (iii) learning; (iv)
83 mobility; (v) self-direction; (vi) capacity for independent living; and (vii) economic self-
84 sufficiency; and

85 (D) reflects the individual's need for a combination and sequence of special,
86 interdisciplinary, or generic care, treatment, or other services which are of lifelong or extended
87 duration and are individually planned and coordinated.

88 Section 3. An excise is hereby imposed upon the transfer of occupancy of any room or
89 rooms in a bed and breakfast establishment, hotel, lodging house, transient accommodation or
90 motel in this commonwealth by any operator at the rate of 5 per cent of the total amount of rent
91 for each such occupancy. No excise shall be imposed if the total amount of rent is less than 15
92 dollars per day or its equivalent.

93

94 The operator shall pay the excise to the commissioner at the time provided for filing the
95 return required by section 16 of chapter 62C.

96 Section 3A. Any city or town which accepts the provisions of this section shall be
97 authorized to impose a local excise tax upon the transfer of occupancy of any room or rooms in a
98 bed and breakfast establishment, hotel, lodging house, transient accommodation or motel located
99 within such city or town by any operator at a rate up to, but not exceeding, 6 per cent of the total
100 amount of rent for each such occupancy; provided, however, that in the case of municipalities
101 within Barnstable County an additional excise tax of 2.75 percent shall be assessed and deposited
102 into the Cape Cod Water Infrastructure Trust Fund and shall be used to defray the costs
103 associated with municipal water quality restoration projects; and provided further, that the city
104 of Boston is hereby authorized to impose such local excise upon the transfer of occupancy of any
105 room in a bed and breakfast establishment, hotel, lodging house, transient accommodation or
106 motel located within said city by any operator at the rate of up to but not exceeding 6.5 per cent
107 of the total amount of rent of each such occupancy. No excise shall be imposed if the total
108 amount of rent is less than 15 dollars per day or its equivalent or if the accommodation is exempt
109 under the provisions of section 2 of this chapter. The operator shall pay the local excise tax
110 imposed under the provisions of this section to the commissioner at the same time and in the
111 same manner as the excise tax due the commonwealth. All sums received by the commissioner
112 under this section as excise, penalties or forfeitures, interest, costs of suit and fines shall at least
113 quarterly be distributed, credited and paid by the state treasurer upon certification of the
114 commissioner to each city or town that has adopted the provisions of this section in proportion to
115 the amount of such sums received from the transfer of occupancy in each such city or town or the
116 Cape Cod Water Infrastructure Trust Fund, as applicable pursuant to this section. This section
117 shall only take effect in a city or town accepting the provisions of this section by a majority vote
118 of the city council with the approval of the mayor, in the case of a city with a Plan A, Plan B, or

119 Plan F charter; by a majority vote of the city council, in the case of a city with a Plan C, Plan D,
120 or Plan E charter; by a majority vote of the annual town meeting or a special meeting called for
121 the purpose, in the case of a municipality with a town meeting form of government; or by a
122 majority vote of the town council, in the case of a municipality with a town council form of
123 government. The provisions of this section shall take effect on the first day of the calendar
124 quarter following 30 days after such acceptance, or on the first day of such later calendar quarter
125 as the city or town may designate. The city or town, in accepting the provisions of this section,
126 may not revoke or otherwise amend the applicable local tax rate more often than once in any 12
127 month period.

128

129 The commissioner shall make available to any city or town requesting such information
130 the total amount of room occupancy tax collected in the preceding fiscal year in the city or town
131 requesting the information.

132 Section 4. Reimbursement for the excise hereby imposed shall be paid by the occupant of
133 such room or rooms to the operator and each operator in this commonwealth shall add to the rent
134 and shall collect from the occupant the full amount of the excise imposed by this chapter, or an
135 amount equal as nearly as possible or practical to the average equivalent thereof; and such excise
136 shall be a debt from the occupant to the operator, when so added to the rent, and shall be
137 recoverable at law in the same manner as other debts.

138 Section 4A. The commissioner may enter into a voluntary collection agreement with any
139 hosting platform or any operator's agent required to remit the excise under section 13 who is
140 willing to assume liability for the collection and remittance of the excise imposed under this

141 chapter on behalf of the operators that hosting platform or operator's agent represents. The
142 hosting platform or operator's agent shall not be liable for any faults in collecting or remitting
143 the excise caused by the hosting platform's or operator's agent's reasonable reliance on
144 representations made to it by the operator about the nature of the property being rented, the
145 duration of the occupancy, or other similar misrepresentations made by the operator to the
146 hosting platform or operator's agent. The operator shall be liable for any unpaid excise resulting
147 from any such misrepresentations. A hosting platform or operator's agent shall not be liable for
148 any over collection of excise if the excise collected was remitted to the commissioner, and if said
149 over collection resulted from the hosting platform's or operator's agent's reasonable reliance on
150 the operator's representations about the nature of the property being rented, about the nature of
151 the occupancy or whether such property was exempt from the excise. The operator shall be
152 liable for any monetary damages to the occupant resulting from any such misrepresentations.

153

154 Section 5. The amount of the excise collected by the operator from the occupant under
155 the provisions of this chapter shall be stated and charged separately from the rent and shown
156 separately on any record thereof at the time the transfer of occupancy is made, or on any
157 evidence of such transfer issued or used by the operator.

158 Section 6. No person shall operate a bed and breakfast establishment, hotel, lodging
159 house, transient accommodation or motel in this commonwealth unless a certificate of
160 registration has been issued to him in accordance with section 67 of chapter 62C.

161

162 Section 7A. Any operator who has paid to the commissioner an excise under section 3
163 upon an account later determined to be worthless shall be entitled to an abatement of the excise
164 paid on such worthless account. Such claim for abatement shall be filed on or before April the
165 fifteenth of each year, covering the amount of the excise on such accounts determined to be
166 worthless in the prior calendar year.

167

168 Any operator who shall recover an excise on an account previously determined to be
169 worthless, for which an application for abatement has been filed, shall report and include the
170 same in his monthly return at the time of recovery.

171 Section 7B. Every operator who fails to pay to the commissioner any sums required to be
172 paid by this chapter shall be personally and individually liable therefor to the commonwealth.
173 The term “operator”, as used in this section, includes an officer or employee of a corporation, or
174 a member or employee of a partnership or a limited liability company, who as such officer,
175 employee or member is under a duty to pay over the taxes imposed by this chapter.

176 Any operator who misrepresents to a hosting platform or operator’s agent required to
177 remit the excise under section 13, that his or her property is exempt from the excise imposed
178 under section 3 shall be liable for any unpaid excise under this section, and shall have committed
179 an unfair trade practice under chapter 93A in making such a misrepresentation to the hosting
180 platform or operator’s agent.

181

182 Section 12. No excise shall be imposed, pursuant to this chapter, upon the transfer of
183 occupancy of any room or rooms in a hotel, lodging house, transient accommodation or motel if
184 the occupant is an employee of the United States military traveling on official United States
185 military orders which encompass the date of said occupancy. Each operator shall maintain such
186 records as the commissioner shall require to substantiate exemptions claimed under this section.

187 Section 13. The operator may elect to allow a hosting platform or any operator’s agent to
188 collect rent or facilitate the collection or payment of rent on their behalf through a written
189 agreement on any accommodation subject to the excise under this chapter. Any hosting platform
190 or operator’s agent that enters into a written agreement with the operator to collect rent or
191 facilitate the collection or payment of rent on behalf of the operator on any accommodation
192 subject to the excise under this chapter shall: (i) apply for and obtain a certificate of registration
193 from the commissioner in accordance with section 67 of chapter 62C on behalf of the operator;
194 and (ii) assess, collect, report, and remit the excise to the commissioner as described for
195 operators in sections 3, 4, 5, 6 and 7A. Said certificate of registration obtained from the
196 commissioner under this subsection shall identify and be in the name of the individual operator
197 not the hosting platform or operator’s agent.

198

199 Any hosting platform or operator’s agent collecting and remitting the excise on behalf of
200 the operator shall provide notification within a reasonable time to said operator that the excise
201 has been collected and remitted to the commissioner under section 3. The notification may be
202 delivered in-hand or by mail, or conveyed by electronic message, mobile or smart phone
203 application or some other similar electronic process, digital media or communication portal. An

204 operator shall not be responsible for collecting and remitting the excise on any transaction for
205 which it has received notification from a hosting platform or operator's agent that the excise has
206 been collected and remitted to the commissioner on their behalf.

207 The commissioner may promulgate rules or regulations for the assessing, reporting,
208 collecting, remitting and enforcement of the room occupancy excise under this section.

209 SECTION 2. The commissioner may promulgate rules and regulations to implement and
210 operate voluntary collection agreements under section 4A of chapter 64G of the general laws
211 within 6 months of the enactment date of this act; provided, that said regulations shall contain
212 minimum standards for a hosting platform and an operator's agent to be eligible to enter into a
213 voluntary collection agreement with the commissioner.

214 SECTION 3. This Act shall take effect 14 months from its enactment.