

HOUSE No. 2425

The Commonwealth of Massachusetts

PRESENTED BY:

Mike Connolly

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 addressing international real estate speculation.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | DATE ADDED: |
|------------------------------------|-------------------------|------------------|
| <i>Mike Connolly</i> | <i>26th Middlesex</i> | <i>1/16/2019</i> |
| <i>Julian Cyr</i> | <i>Cape and Islands</i> | <i>2/1/2019</i> |
| <i>Michelle M. DuBois</i> | <i>10th Plymouth</i> | <i>1/20/2019</i> |
| <i>Nika C. Elugardo</i> | <i>15th Suffolk</i> | <i>1/29/2019</i> |
| <i>Mary S. Keefe</i> | <i>15th Worcester</i> | <i>1/28/2019</i> |
| <i>David Henry Argosky LeBoeuf</i> | <i>17th Worcester</i> | <i>1/23/2019</i> |
| <i>Denise Provost</i> | <i>27th Middlesex</i> | <i>1/28/2019</i> |
| <i>David Allen Robertson</i> | <i>19th Middlesex</i> | <i>1/25/2019</i> |
| <i>Maria Duaine Robinson</i> | <i>6th Middlesex</i> | <i>2/1/2019</i> |

HOUSE No. 2425

By Mr. Connolly of Cambridge, a petition (accompanied by bill, House, No. 2425) of Mike Connolly and others relative to the imposition of a fee on the purchase price upon the transfer of real property interest to alien purchasers in certain real property transactions. Revenue.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act addressing international real estate speculation.

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. For purposes of this act, the following words and phrases shall have the
2 following meanings:-

3 "Alien", any person not a citizen or national of the United States.

4 "Alien purchaser", the transferee, grantee or recipient of any real property interest who is
5 an alien.

6 "Purchase price", all consideration paid or transferred by or on behalf of an alien
7 purchaser to a seller or his or her nominee, or for his or her benefit, for the transfer of any real
8 property interest, and shall include, but not be limited to, all cash or its equivalent so paid or
9 transferred; all cash or other property paid or transferred by or on behalf of the alien purchaser to
10 discharge or reduce any obligation of the seller; the principal amount of all notes or their
11 equivalent, or other deferred payments, given or promised to be given by or on behalf of the
12 alien purchaser to the seller or his nominee; the outstanding balance of all obligations of the

13 seller which are assumed by the alien purchaser or to which the real property interest transferred
14 remains subject after the transfer, determined at the time of transfer, but excluding real estate
15 taxes and other municipal liens or assessments which are not overdue at the time of transfer; the
16 fair market value, at the time of transfer, of any other consideration or thing of value paid or
17 transferred by or on behalf of the alien purchaser, including, but not limited to, any property,
18 goods or services paid, transferred or rendered in exchange for such real property interest.

19 "Real property interest", any present or future legal or equitable interest in or to real
20 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
21 which holds any legal or equitable interest in real property, the interest of a partner or member in
22 a partnership or limited liability company, the interest of a stockholder in a corporation, the
23 interest of a holder of an option to purchase real property, the interest of a buyer or seller under a
24 contract for purchase and sale of real property, and the transferable development rights created
25 under chapter 183A of the General Laws; but shall not include any interest which is limited to
26 any of the following: the dominant estate in any easement or right of way; the right to enforce
27 any restriction; any estate at will or at sufferance; any estate for years having a term of less than
28 30 years; any reversionary right, condition, or right of entry for condition broken; and the interest
29 of a mortgagee or other secured party in any mortgage or security agreement.

30 "Seller", the transferor, grantor or immediate former owner of any real property interest.

31 "Time of transfer", the time at which any real property interest transfer is legally effective
32 as between the parties thereto, and, in any event, with respect to a transfer evidenced by an
33 instrument recorded with the appropriate registry of deeds or filed with the assistant recorder of
34 the appropriate registry district, not later than the time of such recording or filing.

35 SECTION 2. (a) There is hereby imposed a fee equal to 15 per cent of the purchase price
36 upon the transfer of any real property interest to an alien purchaser in any real property situated
37 in a city or town that accepts the provisions of this act. Said fee shall be the liability of the alien
38 purchaser of such real property interest, and any agreement between the alien purchaser and the
39 seller or any other person with reference to the allocation of the responsibility for bearing said
40 fee shall not affect such liability of the alien purchaser. The fee shall be paid to the city or town,
41 or its designee, and shall be accompanied by a copy of the deed or other instrument evidencing
42 such transfer, if any, and an affidavit signed under oath or under the pains and penalties of
43 perjury by the alien purchaser or his or her legal representative and the seller or his or her legal
44 representative, attesting to the true and complete purchase price and the basis, if any, upon which
45 the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The city or
46 town, or its designee, shall promptly thereafter execute and issue a certificate indicating that the
47 appropriate fee has been paid or that the transfer is exempt from the fee. The register of deeds for
48 the land in which the property is located, shall not record or register, or receive or accept for
49 recording or registration, any deed, except a mortgage deed, to which has not been affixed such a
50 certificate executed by the city or town or its designee. Failure to comply with this requirement
51 shall not affect the validity of any instrument.

52 (b) The city or town shall deposit all fees received hereunder with the city or town
53 treasurer. The treasurer shall deposit such fees into an affordable housing trust fund of the city or
54 town, established pursuant to section 55C of chapter 44 of the General Laws or any special act
55 creating such affordable housing trust fund. The fee imposed hereunder shall be due
56 simultaneously with the time of transfer of the transfer upon which it is imposed.
57 Notwithstanding the foregoing, whenever there is a conveyance of real property interests and a

58 conveyance of personalty related thereto at or about the same time, the allocations of payments
59 between real estate and personalty agreed to by the alien purchaser and seller shall not determine
60 the amount of the fee due pursuant to this section; instead, the city or town may require payment
61 of the fee referred to in real property interests so conveyed as determined by the city or town.

62 SECTION 3. At any time within 7 days following the issuance of the certificate of
63 payment of the fee imposed by this act, the alien purchaser or his or her legal representative may
64 return said certificate to the city or town, or its designee for cancellation, together with an
65 affidavit signed under oath or under the pains and penalties of perjury that the transfer, with
66 respect to which such certificate was issued, has not been consummated, and thereupon the fee
67 paid with respect to such transfer shall be forthwith returned to the alien purchaser or his or her
68 legal representative.

69 SECTION 4. (a) A transfer of real property interests shall be exempt from the fee
70 established by this act if the real property is used as the principal place of residence by the alien
71 purchaser.

72 (b) Except as otherwise provided, the alien purchaser shall have the burden of proof that
73 any transfer is exempt under this section and any otherwise exempt transfer shall not be exempt
74 in the event that such transfer, by itself or as part of a series of transfers, was made for the
75 primary purpose of evading the fee imposed by this act.

76 SECTION 5. (a) An alien purchaser who fails to pay all or any portion of the fee
77 established by this act on or before the time when the same is due shall be liable for the
78 following additional payments in addition to said fee: (a) the alien purchaser shall pay interest on
79 the unpaid amount of the fee to be calculated from the time of transfer at a rate equal to 14 per

80 cent per annum; and (b) any person who, without fraud or willful intent to defeat or evade a fee
81 imposed by this act, fails to pay all or a portion of the fee within 30 days after the time of
82 transfer, shall pay a penalty equal to 5 per cent of the outstanding fee as determined by the city or
83 town for each month or portion thereof thereafter that the fee is not paid in full; provided,
84 however, that in no event shall the amount of any penalty imposed hereunder exceed 25 per cent
85 of the unpaid fee due at the time of transfer. Whenever the city or town determines that all or a
86 portion of a fee due under this act was unpaid due to fraud with intent to defeat or evade the fee
87 imposed by this act, a penalty equal to the amount of said fee as determined by the city or town
88 shall be paid by the alien purchaser in addition to said fee.

89 (b) All fees, penalties and interest required to be paid pursuant to this act shall constitute
90 a personal debt of the alien purchaser and may be recovered in an action of contract or in any
91 other appropriate action, suit or proceeding brought by the city or town; said action, suit or
92 proceeding shall be subject to the provisions of chapter 260 of the General Laws.

93 (c) If any alien purchaser liable to pay the fee established by this act neglects or refuses to
94 pay the same, the amount, including any interest and penalty thereon, shall be a lien in favor of
95 the city or town upon all property and rights to property, whether real or personal, belonging to
96 such alien purchaser.

97 (d) In any case where there has been a refusal or neglect to pay any fee, interest or
98 penalties imposed by this act, whether or not levy has been made, the city or town, in addition to
99 other modes of relief, may direct a civil action to be filed in a district or superior court of the
100 commonwealth to enforce the lien of the city or town under this act with respect to such liability

101 or to subject any property of whatever nature, of the delinquent, or in which he or she has any
102 right, title or interest, to the payment of such liability.

103 SECTION 6. Any city or town that has accepted section 55C of chapter 44 of the General
104 Laws or has provided for an affordable housing trust fund through a special law may accept the
105 provisions of this act pursuant to the procedure set forth in section 4 of chapter 4 of the General
106 Laws.