

SENATE No. 789

The Commonwealth of Massachusetts

PRESENTED BY:

Julian Cyr

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 relative to attainable housing in seasonal communities.

PETITION OF:

NAME:

Julian Cyr

DISTRICT/ADDRESS:

Cape and Islands

SENATE No. 789

By Mr. Cyr, a petition (accompanied by bill, Senate, No. 789) of Julian Cyr for legislation relative to attainable housing in seasonal communities. Housing.

The Commonwealth of Massachusetts

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

An Act relative to attainable housing in seasonal communities.

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. Notwithstanding any general or special law to the contrary, the department
2 of housing and economic development shall give special consideration to the following relative
3 counting otherwise non-qualified projects as part of a municipalities overall percentage for the
4 purposes of the subsidized housing inventory: (1) 1 bedroom housing units in municipalities that
5 can demonstrate their low income housing needs are not limited to 2, 3 and 4 bedroom units; (2)
6 projects in municipalities within the commonwealth with an average home price that is 100 per
7 cent greater than the statewide median home price; (3) covenant housing within Nantucket; and
8 (4) developments in low-income units a bordering municipalities or a district region where the
9 municipality has invested community preservation act funds or funds from a municipal housing
10 trust.

11 SECTION 2. Section 6 of chapter 44B is hereby amended by inserting after the word
12 “purpose”, in line X, the following words:- “; provided, however, that funds that have not been

13 expended for no less than three consecutive years may be used for open space, historic resources,
14 or community housing by a majority vote of the legislative body”

15 SECTION 3. Section 1A of chapter 40, as appearing in the 2016 Official Edition, is
16 hereby amended by adding the following definition:-

17 “Tiny house”, a detached structure containing a dwelling unit with no more than 600
18 square feet, excluding the area of any floor level located above the main floor, intended for year
19 round occupancy that meets the requirements of chapter 143, and may include single-room
20 structures, and which is built on either a permanent foundation or on a chassis that is suitable for
21 registration for transport on public highways of the state.

22 SECTION 4. Section 3 of chapter 40A, as appearing in the 2016 Official Edition, is
23 hereby amended by adding the following paragraph:-

24 “A municipality that permits accessory dwelling units pursuant to this section shall
25 permit a tiny house as a detached accessory dwelling unit; provided, however, that such land or
26 structures may be subject to reasonable regulations concerning dimensional setbacks, screening
27 and the bulk and height of structures; provided, however, that a tiny house used for habitation
28 shall be connected to a public water system or a private well, and to a public sewer system or a
29 subsurface wastewater disposal system that has been approved by the Massachusetts department
30 of environmental protection. A zoning ordinance or by-law may require that the principal
31 dwelling or the accessory dwelling unit be continuously owner-occupied and may limit the total
32 number of accessory dwelling units in the municipality to not less than 5 per cent of the total
33 non-seasonal single-family housing units in the municipality.”

34 SECTION 5. Chapter 40, as appearing in the 2016 Official Edition, is hereby amended by
35 inserting, after section 60B, the following section:-

36 60C. A city or town, by vote of its town meeting, town council or city council, with the
37 approval of the mayor where required by law, on its own behalf or in conjunction with one or
38 more cities or towns, may exempt from property taxation, under chapter 59, a dwelling unit that
39 is rented on a yearly basis, and occupied year-round, for an amount not to exceed 150 per cent
40 the fair market rent established by the United States Department of Housing and Urban
41 Development for the metropolitan statistical area. The owner of a dwelling qualifying for
42 exemption under this section shall submit to the municipality or its agent documentation,
43 including but not limited to a signed lease, necessary to confirm the eligibility of the rental.

44 The amount of the exemption shall be determined by the municipality, but shall not
45 exceed an amount equal to the tax otherwise owed on the property based on the assessed value of
46 the property, including accessory dwelling units, multiplied by the square feet of the living space
47 of all dwelling units on the property that qualify under this section, divided by the total square
48 feet of structures on the property.

49 SECTION 6. Section 3 of chapter 40A of the General Laws, as appearing in the 2016
50 Official Edition, is hereby amended by adding the following paragraph:-

51 No zoning ordinance or by-law shall prohibit or require a special permit for the use of
52 land or structures for an accessory dwelling unit located internally within a single-family
53 dwelling or the rental thereof on a lot not less than 5,000 square feet or on a lot of sufficient area
54 to meet the requirements of title 5 of the state environmental code established by section 13 of
55 chapter 21A, if applicable; provided, however, that such land or structures may be subject to

56 reasonable regulations concerning dimensional setbacks, screening and the bulk and height of
57 structures. The zoning ordinance or by-law may require that the principal dwelling or the
58 accessory dwelling unit be continuously owner-occupied and may limit the total number of
59 accessory dwelling units in the municipality to not less than 5 per cent of the total non-seasonal
60 single-family housing units in the municipality. Not more than 1 additional parking space shall
61 be required for an accessory dwelling unit; provided, however, that, if parking is required for the
62 principal dwelling, that parking shall be retained or replaced. Exterior alterations of the principal
63 dwelling to allow separate primary or emergency access to the accessory dwelling unit shall be
64 allowed without a special permit if such alterations are within applicable dimensional setback
65 requirements. Nothing in this paragraph shall authorize an accessory dwelling unit to violate or
66 avoid compliance with the building, fire, health or sanitary codes, historic or wetlands laws,
67 ordinances or by-laws or title 5 of the state environmental code established by said section 13 of
68 said chapter 21A, if applicable. This section shall not limit a city or town's authority to prohibit
69 or restrict use of an accessory dwelling unit as a short-term rental.

70 SECTION 7. Chapter 23B is hereby amended by adding the following section:-

71 Section 31. (a) For purposes of this section:

72 "Affordable rental housing" means housing that serves persons with a household income
73 of less than 120 per cent of median income for a municipality; and

74 "Qualified developer" means a developer that has partnered with a school district or
75 municipality to create affordable rental housing for school district or municipal employees.

76 (b)The department, or any division within the department, may enter into long-term
77 financing agreements with school districts, municipalities and qualified developers for the
78 creation of affordable rental housing for municipal employees.

79 (c) Payment on a finance agreement under this section shall be deferred until the
80 affordable rental housing that is financed is put into service and the school district or
81 municipality begins collecting rent from the occupants of that affordable rental housing.

82 SECTION 8. Chapter 60 of the General Laws is hereby amended by inserting, after
83 section 37B, the following section:-

84 Section 37C. A property subject to sale under section 37 of this chapter that contains
85 three (3) or less units, the department of housing and community development, shall have a right
86 of first refusal to acquire the tax lien at tax sale, and may assist the owner to discharge the lien or
87 take title and acquire the property in its own name pursuant to regulations to be developed by the
88 corporation, consistent with its purposes. The corporation shall notify the collector of its
89 intention to exercise this right no later than 10 days before the date of sale or any adjournment of
90 the sale. Failure of the corporation to notify the collector as provided herein shall extinguish the
91 right of first refusal under this section.

92 SECTION 9. Chapter 59 of the General Laws is hereby amended by inserting after
93 section 5N the following 2 sections:-

94 Section 5O. In any city or town that accepts this section, the board of selectmen of a
95 town, or in a municipality having a town council form of government, the town council or the
96 mayor, with the approval of the city council in a city, may establish a bifurcated or progressive
97 tax rate on real property.

98 Section 5P. In any city or town which accepts this section, the board of selectmen of a
99 town, or in a municipality having a town council form of government, the town council or the
100 mayor, with the approval of the city council in a city, may establish a property tax exemption for
101 low- or moderate-income households.

102 For purposes of this section: (a) a low-income shall mean a household income of less
103 than 80 per cent of the median household income in the municipality, as established by the
104 published income guidelines for the United States Department of Housing and Urban
105 Development for the metropolitan statistical area; (b) a moderate-income shall mean an income
106 between 80 per cent and 120 per cent of the median household income, as established by the
107 published income guidelines United States Department of Housing and Urban Development for
108 the metropolitan statistical area.

109 A municipality shall have the power to create local rules and procedures for
110 implementing this section in a way that is consistent with the intent of this section.

111 SECTION 10. Notwithstanding any general or special law to the contrary, a special
112 commission is hereby established for the purposes of making an investigation and study relative
113 to the impact of the state building code, fire code, health code, and sanitary code on the
114 availability of affordable housing in the Commonwealth and to whether or not the building code,
115 fire code, health code, or sanitary code may be amended to promote the development of housing
116 that is affordable for a majority of residents. The commission shall consist of: 2 members of the
117 senate to be appointed by the president of the senate; 2 members of the house to be appointed by
118 the speaker of the house; and 6 persons appointed by the governor, 1 of whom shall be a
119 representative of the Home Builders and Remodeler's Association of Massachusetts, 1 of whom

120 shall be a representative of the Massachusetts Association of Realtors, 1 of whom shall be a
121 representative of MassHousing, 1 of whom shall be a representative of the department of housing
122 and community development, 1 of who shall be a representative of the Building Code
123 Coordinating Council, 1 of whom shall be Massachusetts Association of Community
124 Development Corporations.

125 All appointments shall be made not later than 30 days after the effective date of this act.
126 Members shall not receive compensation for their services but may receive reimbursement for
127 the reasonable expenses incurred in carrying out their responsibilities as members of the
128 commission.

129 Not later than July 1, 2019, the commission shall report to the general court the result of
130 its investigation and study and its recommendations, if any, together with drafts of legislation
131 necessary to carry its recommendations into effect by filing the same with the clerk of the house
132 of representatives who shall forward the same to the joint committee on housing and the joint
133 committee on community development and small businesses.

134 SECTION 11. Chapter 44 of the General laws is hereby amended by inserting after
135 section 55C the following section: –

136 Section 55D. (a) For purposes of this section, the following terms shall, unless the
137 context clearly requires otherwise, have the following meanings:-

138 “Affordable Housing Restriction”, a recorded instrument held by a qualified holder which
139 encumbers or restricts a real property interest so that the real property interest is perpetually or
140 for a term of at least 30 years limited to use as a residence occupied by a low or moderate income
141 household which earns less than a specified income level, the upper limit of which may not

142 exceed 175 per cent of the city or town's median income. A "qualified holder" is a governmental
143 body or charitable corporation or trust which qualifies under the terms of chapter 184 to hold an
144 affordable housing restriction.

145 "Eligible Applicants", non-profit and for-profit corporations and organizations,
146 individuals and public entities.

147 "Purchaser", the transferee, grantee or recipient of any real property interest.

148 "Purchase price", all consideration paid or transferred by or on behalf of a purchaser to a
149 seller or the seller's nominee, or for the seller's benefit, for the transfer of any real property
150 interest, and shall include, but not be limited to: (i) all cash or its equivalent so paid or
151 transferred; (ii) all cash or other property paid or transferred by or on behalf of the purchaser to
152 discharge or reduce any obligation of the seller; (iii) the principal amount of all notes or their
153 equivalent, or other deferred payments, given or promised to be given by or on behalf of the
154 purchaser to the seller or the seller's nominee; (iv) the outstanding balance of all obligations of
155 the seller which are assumed by the purchaser or to which the real property interest transferred
156 remains subject after the transfer, determined at the time of transfer, but excluding real estate
157 taxes and other municipal liens or assessments which are not overdue at the time of transfer; (v)
158 the fair market value, at the time of transfer, of any other consideration or thing of value paid or
159 transferred by or on behalf of the purchaser, including, but not limited to, any property, goods or
160 services paid, transferred or rendered in exchange for such real property interest.

161 "Real property interest", any present or future legal or equitable interest in or to real
162 property, and any beneficial interest therein, including the interest of any beneficiary in a trust
163 which holds any legal or equitable interest in real property, the interest of a partner or member in

164 a partnership or limited liability company, the interest of a stockholder in a corporation, the
165 interest of a holder of an option to purchase real property, the interest of a buyer or seller under a
166 contract for purchase and sale of real property, and the transferable development rights created
167 under chapter 183A; but shall not include any interest which is limited to any of the following:
168 the dominant estate in any easement or right of way; the right to enforce any restriction; any
169 estate at will or at sufferance; any estate for years having a term of less than 30 years; any
170 reversionary right, condition, or right of entry for condition broken; and the interest of a
171 mortgagee or other secured party in any mortgage or security agreement.

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

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

178 (b) A city or town may impose a fee up to 2 per cent of the purchase price upon the
179 transfer of any real property interest in any real property situated in the city or town. Said fee
180 shall be the liability of the purchaser of such real property interest, and any agreement between
181 the purchaser and the seller or any other person with reference to the allocation of the
182 responsibility for bearing said fee shall not affect such liability of the purchaser. The fee shall be
183 paid to the city or town, or its designee, and shall be accompanied by a copy of the deed or other
184 instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains
185 and penalties of perjury by the purchaser or the purchaser's legal representative and the seller or

186 the seller's legal representative, attesting to the true and complete purchase price and the basis, if
187 any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed
188 hereby. The city or town, or its designee, shall promptly thereafter execute and issue a certificate
189 indicating that the appropriate fee has been paid or that the transfer is exempt from the fee,
190 stating the basis for the exemption. The register of deeds for the county in which the city or town
191 is located, and the assistant recorder for the registry district of the county in which the city or
192 town is located, shall not record or register, or receive or accept for recording or registration, any
193 deed, except a mortgage deed, to which has not been affixed such a certificate executed by the
194 city or town or its designee. Failure to comply with this requirement shall not affect the validity
195 of any instrument. The city or town shall deposit all fees received hereunder with the city or
196 town's treasurer. The treasurer shall deposit such fees in the city or town's Municipal Affordable
197 Housing Trust Fund established pursuant to section 55C or any other affordable housing trust
198 fund established by a law of the commonwealth providing for the creation and preservation of
199 affordable housing in municipalities for the benefit of low and moderate income households or
200 for the funding of community housing, as defined in and in accordance with chapter 44B. If no
201 such fund exists in a city or town, the treasurer shall pay such funds to the treasurer and receiver
202 general of the commonwealth who shall deposit such funds in the Affordable Housing Trust
203 Fund established by chapter 121D.

204 The fee imposed hereunder shall be due simultaneously with the time of transfer of the
205 transfer upon which it is imposed. Notwithstanding the foregoing, whenever there is a
206 conveyance of real property interests and a conveyance of personalty related thereto at or about
207 the same time, the allocations of payments between real estate and personalty agreed to by the
208 purchaser and seller shall not determine the amount of the fee due pursuant to this section;

209 instead, the city or town may require payment of the fee referred to in real property interests so
210 conveyed as determined by the city or town.

211 (c) At any time within 7 days following the issuance of the certificate of payment of the
212 fee imposed by subsection 2, the purchaser or the purchaser's legal representative may return
213 said certificate to the city or town or its designee for cancellation, together with an affidavit
214 signed under oath or under the pains and penalties of perjury that the transfer, with respect to
215 which such certificate was issued, has not been consummated, and thereupon the fee paid with
216 respect to such transfer shall be forthwith returned to the purchaser or the purchaser's legal
217 representative.

218 (d) The following transfers of real property interests shall be exempt from the fee
219 established by subsection (i):

220 (i) Transfers to the government of the United States, the commonwealth and any of their
221 instrumentalities, agencies or subdivisions, including but not limited to transfers to the city or
222 town.

223 (ii) Transfers which, without additional consideration, confirm, correct, modify or
224 supplement a transfer previously made.

225 (iii) Transfers made as gifts without consideration. In any proceedings to determine the
226 amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less
227 than fair market value of the real property interest transferred was made as a gift without
228 consideration to the extent of the difference between the fair market value of the real property
229 interest transferred and the amount of consideration claimed by the purchaser to have been paid
230 or transferred, if the seller shall have been at the time of transfer the spouse, the lineal

231 descendant, or the lineal ancestor of the purchaser, by blood or adoption, and otherwise it shall
232 be presumed that consideration was paid in an amount equal to the fair market value of the real
233 property interest transferred, at the time of transfer.

234 (iv) Transfers by operation of law without actual consideration, including but not limited
235 to transfers occurring by virtue of the death or bankruptcy of the owner of a real property
236 interest.

237 (v) Transfers made in partition of land and improvements thereto, under chapter 241.

238 (vi) Transfers to any charitable organization as defined in clause Third of section 5 of
239 chapter 59, or any religious organization, provided that the real property interest so transferred
240 will be held by the charitable or religious organization solely for its public charitable or religious
241 purposes.

242 (vii) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee,
243 and transfers of the property subject to a mortgage to the mortgagee in consideration of the
244 forbearance of the mortgagee from foreclosing said mortgage.

245 (viii) Transfers made to a corporation or partnership or limited liability company at the
246 time of its formation, pursuant to which transfer no gain or loss is recognized under the
247 provisions of section 351 or 721 of the Internal Revenue Code of 1986, as amended; provided,
248 however, that such transfer shall be exempt only in the event that: (1) with respect to a
249 corporation, the transferor retains an interest in the newly formed corporation which is equivalent
250 to the interest the transferor held prior to the transfer, or (2) with respect to a partnership or
251 limited liability company, the transferor retains after such formation rights in capital interests and

252 profit interests within such partnership or limited liability company which are equivalent to the
253 interest the transferor held prior to the transfer.

254 (ix) Transfers made to a stockholder of a corporation in liquidation or partial liquidation
255 of the corporation, and transfers made to a partner of a partnership or to a member of a limited
256 liability company in dissolution or partial dissolution of the partnership or limited liability
257 company; but the transfer shall be exempt only if: (1) with respect to a corporation, the transferee
258 receives property, including real property interests and other property received, which is the
259 same fraction of the total property of the transferor corporation as the fraction of the
260 corporation's stock owned by the transferee prior to the transfer or (2) with respect to a
261 partnership or limited liability company, the transferee receives property, including real property
262 interests and other property received, which is the same fraction of the property of the
263 partnership or limited liability company as the fraction of the capital and profit interests in the
264 transferor formerly owned by the transferee.

265 (x) Transfers consisting of the division of marital assets under the provisions of section
266 34 of chapter 208 or other provisions of law.

267 (xi) The first \$2,000,000 of the sale price of any transfer or series of transfers of real
268 property interests in a single transaction. Said exemption may be adjusted to a sale price over
269 \$2,000,000 as determined by the affirmative vote of a majority of voters of the city or town's
270 legislative body.

271 (xii) Transfers of minority interests in corporations, trusts, partnerships or limited liability
272 companies which are publicly traded, which trades are not part of a series of transfers which

273 together constitute a transfer of control of a corporation, trust, partnership or limited liability
274 company.

275 Except as otherwise provided, the purchaser shall have the burden of proof that any
276 transfer is exempt under this section and any otherwise exempt transfer shall not be exempt in
277 the event that such transfer, by itself or as part of a series of transfers, was made for the primary
278 purpose of evading the fee imposed by subsection (i).

279 (e) The city or town's treasurer shall keep a full and accurate account stating when, from
280 or to whom, and on what account money has been paid or received relative to the activities of the
281 Affordable Housing Trust Fund.

282 Schedules of beneficiaries of trusts, list of stockholders of corporations and lists of
283 partnerships filed with the Trust Fund for the purpose of determining or fixing the amount of the
284 fee imposed under section ten or for the purpose of determining the existence of any exemption
285 under section twelve shall not be public records for the purposes of section ten of chapter sixty-
286 six of the General Laws.

287 (f) A purchaser who fails to pay all or any portion of the fee established by subsection (b)
288 on or before the time when the same is due shall be liable for the following additional payments
289 in addition to said fee:

290 (i) Interest: The purchaser shall pay interest on the unpaid amount of the fee to be
291 calculated from the time of transfer at a rate equal to 14 per cent per annum.

292 (ii) Penalties: Any person who, without fraud or willful intent to defeat or evade a fee
293 imposed by this section, fails to pay all or a portion of the fee within 30 days after the time of

294 transfer, shall pay a penalty equal to 5 per cent of the outstanding fee as determined by the city or
295 town for each month or portion thereof thereafter that the fee is not paid in full; provided,
296 however, that in no event shall the amount of any penalty imposed hereunder exceed 25 per cent
297 of the unpaid fee due at the time of transfer. Whenever the city or town determines that all or a
298 portion of a fee due under this section was unpaid due to fraud with intent to defeat or evade the
299 fee imposed by this section, a penalty equal to the amount of said fee as determined by the city or
300 town shall be paid by the purchaser in addition to said fee.

301 (g) The city or town shall notify the purchaser and the seller by registered or certified
302 mail of any failure to discharge in full the amount of the fee due under this section and any
303 penalty or interest assessed. The city or town shall grant a hearing on the matter of the imposition
304 of said fee, or of any penalty or interest assessed, if a petition requesting such hearing is received
305 by the city or town within 30 days after the mailing of said notice. The city or town shall notify
306 the purchaser and the seller in writing by registered or certified mail of its determination
307 concerning the deficiency, penalty or interest within fifteen days after said hearing. Any party
308 aggrieved by a determination of the city or town concerning a deficiency, penalty or interest
309 may, after payment of said deficiency, appeal to the district or superior court within 3 months
310 after the mailing of notification of the determination of the city or town. Upon the failure to
311 timely petition for a hearing, or appeal to said courts, within the time limits hereby established,
312 the purchaser and seller shall be bound by the terms of the notification, assessment or
313 determination, as the case may be, and shall be barred from contesting the fee, and any interest
314 and penalty, as determined by the city or town. All decisions of said courts shall be appealable.
315 Every notice to be given under this section by the city or town shall be effective if mailed by
316 certified or registered mail to the purchaser or the seller at the address stated in a recorded or

317 registered instrument by virtue of which the purchaser holds any interest in land, the transfer of
318 which gives rise to the fee which is the subject of such notice; and if no such address is stated or
319 if such transfer is not evidenced by an instrument recorded or registered in the public records in
320 the city or town, such notice shall be effective when so mailed to the purchaser or seller in care
321 of any person appearing of record to have a fee interest in such land, at the address of such
322 person as set forth in an instrument recorded or registered in the city or town.

323 All fees, penalties and interest required to be paid pursuant to this section shall constitute
324 a personal debt of the purchaser and may be recovered in an action of contract or in any other
325 appropriate action, suit or proceeding brought by the city or town; said action, suit or proceeding
326 shall be subject to the provisions of chapter 260.

327 If any purchaser liable to pay the fee established by this section neglects or refuses to pay
328 the same, the amount, including any interest and penalty thereon, shall be a lien in favor of the
329 city or town upon all property and rights to property, whether real or personal, belonging to
330 either such purchaser or such seller. Said lien shall arise at the time of transfer and shall continue
331 until the liability for such amount is satisfied. Said lien shall in any event terminate not later than
332 6 years following the time of transfer. Said lien shall not be valid as against any mortgagee,
333 pledgee, purchaser or judgment creditor unless notice thereof has been filed by the city or town
334 (i) with respect to real property or fixtures, in the registry of deeds for the county in which the
335 city or town resides or (ii) with respect to personal property, in the office in which a security or
336 financing statement or notice with respect to the property would be filed in order to perfect a
337 nonpossessory security interest belonging to the person named in the relevant notice, subject to
338 the same limitations as set forth in section 50 of chapter 62C.

339 Purchasers applying for an exemption under subsection (d) shall be required at the time
340 of application for exemption to execute an agreement legally binding on purchasers and
341 separately legally binding upon any legal representative of the purchasers: (i) assuming complete
342 liability for any fee, plus interest and penalties if any, waived on account of an allowed
343 exemption subsequently determined to have been invalid, and (ii) submitting to the jurisdiction
344 of the trial court of the commonwealth sitting in the county where the city or town is located.
345 Fees, plus interest and penalties if any, shall be calculated as of the date of the initial property
346 transfer. Execution of the above-described agreement shall not be required of any mortgagee,
347 pledge, purchaser or judgment creditor unless notice of the agreement has been recorded or filed
348 by the city or town.

349 In any case where there has been a refusal or neglect to pay any fee, interest or penalties
350 imposed by this act, whether or not levy has been made, the city or town, in addition to other
351 modes of relief, may direct a civil action to be filed in a district or superior court of the
352 commonwealth to enforce the lien of the city or town under this section with respect to such
353 liability or to subject any property of whatever nature, of the delinquent, or in which he has any
354 right, title or interest, to the payment of such liability.

355 The city or town may issue a waiver or release of any lien imposed by this section. Such
356 waiver or release shall be conclusive evidence that the lien upon the property covered by the
357 waiver or release is extinguished.

358 (h) The fee described by subsection (b) shall be of 5-year duration from the date this
359 section takes effect. The imposition of the fee and the fee amount shall be determined by a
360 majority vote by the city or town's legislative body. This fee may continue for 5-year periods by

361 a majority vote of the city or town’s legislative body. The fee described by subsection (b) may
362 be: (i) decreased, or (ii) eliminated by a two-thirds vote of the city or town’s legislative body.
363 The threshold exemption described in clause (xiii) of subsection (d) may similarly be raised by
364 an affirmative majority vote of the city or town’s legislative body. In the event that the
365 legislative body does not renew the fee at the 10-year anniversary, or any subsequent 5-year
366 anniversary, or the legislative body votes to eliminate the fee, the balance of any fees previously
367 collected shall be transferred to the city or town and held by the treasurer in a separate account,
368 and shall first be used to satisfy any outstanding liabilities or obligations incurred by the city or
369 town or the Municipal Affordable Housing Trust as a result of imposition of the fee, and the
370 remainder may be expended without further appropriation by the legislative body for affordable
371 housing purposes. In the event that the liabilities and obligations of the city or town or the
372 Municipal Affordable Housing Trust exceed the amounts transferred to the city or town, the fee
373 shall remain in full force and effect until such liabilities and obligations have been satisfied.

374 (i) If the city or town has determined that a fee is due by asserting the application of the
375 evasion of fee doctrine described in subsection (b), then the purchaser shall have the burden of
376 demonstrating by clear and convincing evidence as determined by the city or town that the
377 transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose other than
378 avoidance of the fee set forth in subsection (b) and (ii) economic substance apart from the
379 asserted fee avoidance benefit. In all such cases, the transferee shall also have the burden of
380 demonstrating by clear and convincing evidence as determined by the city or town that the
381 asserted non-fee-avoidance business purpose is commensurate with the amount of the fee
382 pursuant to subsection (b) to be thereby avoided.