SENATE DOCKET, NO. 565 FILED ON: 2/2/2021

# SENATE . . . . . No. 868

## The Commonwealth of Massachusetts

PRESENTED BY:

***Joanne M. Comerford***

*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 empowering cities and towns to impose a fee on certain real estate transactions to support affordable housing.

PETITION OF:

| NAME: | DISTRICT/ADDRESS: | |
|---|---|---|
| *Joanne M. Comerford* | *Hampshire, Franklin and Worcester* | |
| *Jason M. Lewis* | *Fifth Middlesex* | *2/24/2021* |
| *Jack Patrick Lewis* | *7th Middlesex* | *2/24/2021* |
| *Michael J. Barrett* | *Third Middlesex* | *2/26/2021* |
| *Erika Uyterhoeven* | *27th Middlesex* | *2/26/2021* |
| *Mindy Domb* | *3rd Hampshire* | *2/26/2021* |
| *James B. Eldridge* | *Middlesex and Worcester* | *3/9/2021* |
| *Adam G. Hinds* | *Berkshire, Hampshire, Franklin and Hampden* | *3/9/2021* |
| *Mary S. Keefe* | *15th Worcester* | *3/12/2021* |
| *Elizabeth A. Malia* | *11th Suffolk* | *3/16/2021* |
| *Sal N. DiDomenico* | *Middlesex and Suffolk* | *4/4/2021* |
| *Maria Duaime Robinson* | *6th Middlesex* | *4/4/2021* |
| *Susannah M. Whipps* | *2nd Franklin* | *4/20/2021* |
| *Patricia D. Jehlen* | *Second Middlesex* | *4/29/2021* |
| *Julian Cyr* | *Cape and Islands* | *5/10/2021* |
| *Harriette L. Chandler* | *First Worcester* | *5/18/2021* |

| | | |
|---|---|---|
| *Mike Connolly* | *26th Middlesex* | *6/4/2021* |
| *Rebecca L. Rausch* | *Norfolk, Bristol and Middlesex* | *6/4/2021* |
| *Cindy F. Friedman* | *Fourth Middlesex* | *9/17/2021* |
| *Joan B. Lovely* | *Second Essex* | *9/23/2021* |

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# SENATE . . . . . No. 868

By Ms. Comerford, a petition (accompanied by bill, Senate, No. 868) of Joanne M. Comerford, Jason M. Lewis, Jack Patrick Lewis, Michael J. Barrett and other members of the General Court for legislation to empower cities and towns to impose a fee on certain real estate transactions to support affordable housing. Housing.

## The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Second General Court**
**(2021-2022)**

An Act empowering cities and towns to impose a fee on certain real estate transactions to support affordable housing.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

Chapter 44 of the General Laws is hereby amended by inserting after section 55C the following section:–

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

“Affordable Housing Purposes”, uses allowed by the municipal or state affordable housing trust fund into which funds are deposited, or, if the funds are deposited into a community preservation act fund, the housing uses allowed thereunder.

“Affordable Housing Restriction", a recorded instrument held by a qualified holder which encumbers or restricts a real property interest so that the real property interest is perpetually or for a term of at least 30 years limited to use as a residence occupied by a low or moderate income

household which earns less than a specified income level, the upper limit of which may not exceed 175 per cent of the median income for a household in that city or town; provided, however that moneys derived from a transfer fee implemented pursuant to this section and deposited into a state or municipal Affordable Housing Trust Fund or Community Preservation Fund, may be subject to the lower income restrictions that govern said Fund. A “qualified holder” is a governmental body or charitable corporation or trust which qualifies under the terms of chapter 184 to hold an affordable housing restriction.

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

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

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

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

“Speculative sale” the sale of property for more than 3 times the state median sale price for a single family home, within 1 year of the purchase of that property by the person or entity selling the property; provided, however, that a sale of owner occupied residential property shall not be deemed speculative if the sale of the property is necessitated by the seller’s need to relocate for employment or family reasons or by the seller’s need to liquidate their assets for other compelling reasons, or for other reasons established by the city or town opting to impose a higher transfer fee for speculative sales.

"Time of transfer" of any real property interest shall mean the time at which such transfer is legally effective as between the parties thereto, and, in any event, with respect to a transfer evidenced by an instrument recorded with the appropriate registry of deeds or filed with the

assistant recorder of the appropriate registry district, not later than the time of such recording or filing.

(b) A city or town may impose a fee upon the transfer of any real property interest in any real property situated in the city or town, as defined and as subject to conditions and exemptions described herein.

(i) The amount of the transfer fee of shall be no less than .5 per cent and up to 2 per cent on the purchase price of such property; provided, however, that if the sale of said property constitutes a speculative sale as defined herein, the amount of the fee may be up to 6 per cent of the purchase price.

(ii) The city or town shall have the authority to designate whether the fee shall be borne by the buyer, the seller, or how it will be allocated between the two.

(iii) The fee shall be paid to the city or town, or its designee, and shall be accompanied by a copy of the deed or other instrument evidencing such transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by the purchaser or the purchaser's legal representative and the seller or the seller's legal representative, attesting to the true and complete purchase price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part from the fee imposed hereby. The city or town, or its designee, shall promptly thereafter execute and issue a certificate indicating that the appropriate fee has been paid or that the transfer is exempt from the fee, stating the basis for the exemption.

(iv) The register of deeds for the county in which the city or town is located, and the assistant recorder for the registry district of the county in which the city or town is located, shall not record or register, or receive or accept for recording or registration, any deed, except a

mortgage deed, to which has not been affixed such a certificate executed by the city or town or its designee. Failure to comply with this requirement shall not affect the validity of any instrument.

(v) The treasurer of the city or town shall deposit all fees received hereunder in the city or town's Municipal Affordable Housing Trust Fund established pursuant to section 55C or any other municipal affordable housing trust fund established by a law of the commonwealth providing for the creation and preservation of affordable housing in municipalities for the benefit of low and moderate income households or for the funding of community housing, as defined in and in accordance with chapter 44B. If no such Affordable Housing Trust Fund exists in a city or town, the treasurer shall deposit all fees into the city or town's Community Preservation Fund pursuant to section 7 of chapter 44B, provided that funds derived from transfer fees shall be used exclusively for affordable housing purposes. If neither an Affordable Housing Trust Fund, nor a Community Preservation Fund exist in said city or town, the treasurer of said city or town shall pay such funds to the treasurer and receiver general who shall deposit such funds in the Affordable Housing Trust Fund established by chapter 121D, and earmark those funds for affordable housing purposes for that city or town.

(vi) The fee imposed hereunder shall be due simultaneously with the time of transfer of the transfer upon which it is imposed. Notwithstanding the foregoing, whenever there is a conveyance of real property interests and a conveyance of personalty related thereto at or about the same time, the allocations of payments between real estate and personalty agreed to by the purchaser and seller shall not determine the amount of the fee due pursuant to this section; instead, the city or town may require payment of the fee referred to in real property interests so conveyed as determined by the city or town.

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

(d) The following transfers of real property interests shall be exempt from the fees established by this section; provided, however, that any city or town may adopt further exemptions in addition to those provided herein; and provided, further, that except as otherwise required, the seller or purchaser or both parties, as specified in the city or town Ordinance adopted pursuant to this section, shall have the burden of proving that any transfer is exempt; and provided, further, that any otherwise exempt transfer shall not be exempt in the event that such transfer, by itself or as part of a series of transfers, was made for the primary purpose of evading the fee established pursuant to this section.

(i) Transfers for less than 100 per cent of the state median sale price of a single family home, except where the median sale price for a single family home in a municipality seeking to implement this fee is below that of 100 per cent of the state median single family sale price, in which case transfers for less than 100 per cent of the county median sales price for a single family home, as determined annually by April 1st of each calendar year by the department of housing and community development, shall be exempt in their entirely; provided, however, that the amount of this threshold for imposing a transfer fee may be increased by the implementing city or town;

(ii) Transfers made as gifts with consideration less than $100; provided, however, that in any proceedings to determine the amount of any fee due hereunder, it shall be presumed that any transfer for consideration of less than fair market value of the real property interest transferred was made as a gift without consideration to the extent of the difference between the fair market value of the real property interest transferred and the amount of consideration claimed by the purchaser to have been paid or transferred, if the seller shall have been at the time of transfer the spouse, the lineal descendant, or the lineal ancestor of the purchaser, by blood or adoption, and otherwise it shall be presumed that consideration was paid in an amount equal to the fair market value of the real property interest transferred, at the time of transfer;

(iii) Transfers to the government of the United States, the Commonwealth and any of their instrumentalities, agencies or subdivisions, including but not limited to transfers to the city or town;

(iv) Transfers which, without additional consideration, confirm, correct, modify or supplement a transfer previously made;

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

(vi) Transfers made in partition of land and improvements thereto, under chapter 241;

(vii) Transfers to any charitable organization, as defined in clause Third of section 5 of chapter 59, or any religious organization, provided that the real property interest so transferred will be held by the charitable or religious organization solely for affordable housing-related uses that are consistent with the uses allowed by the municipality’s affordable housing trust, if one

exists, or with the Commonwealth's affordable housing trust if no such municipal trust exists; and provided, further, that such uses must be available to the general public;

(viii) Transfers to a mortgagee in foreclosure of the mortgage held by such mortgagee, and transfers of the property subject to a mortgage to the mortgagee in consideration of the forbearance of the mortgagee from foreclosing said mortgage;

(ix) Transfers consisting of the division of marital assets under the provisions of section 34 of chapter 208 or other provisions of law;

(x) Transfers of residential property that include 1 or more units governed by affordable housing restrictions; provided, however, that the fee imposed under the provisions of this section on such a property shall be proportionately reduced based on the percentage of residential units with affordable housing restrictions, as compared to the total number of residential units in that property;

(e) The city or town's treasurer shall keep a full and accurate account stating when, from or to whom, and on what account money has been paid or received relative to the activities of the Affordable Housing Trust Fund or Community Preservation Act fund, whichever is applicable.

(f) (i) The establishment of a transfer fee pursuant to this section, the determination of the fee amount, the determination as to whether the ordinance establishing the fee shall have a time-limited sunset provision, and the adoption of any non-mandatory exemptions shall be determined by a majority vote by the city or town's legislative body.

(ii) A city or town that establishes a transfer fee pursuant to this section may provide for the collection and liening of any outstanding transfer fee. The city or town shall have the same

remedies to collect said amount as provided by law with respect to the collection of real property taxes.

(iii) A city or town enacting a real estate transfer fee pursuant to this section is authorized to issue rules, policies and procedures to effectuate its terms.

(iv) A city or town that adopts this section shall provide to the Regional Planning Office publicly available reports on the total fees collected and disbursed in accordance with this section.