HOUSE DOCKET, NO. 4013 FILED ON: 1/20/2023

HOUSE . . . . . No. 2788

The Commonwealth of Massachusetts

PRESENTED BY:

Dylan A. Fernandes

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 mansion fee to support affordable housing.

PETITION OF:

NAME:	DISTRICT/ADDRESS:	DATE ADDED:
Dylan A. Fernandes	*Barnstable, Dukes and Nantucket*	*1/20/2023*
Lydia Edwards	*Third Suffolk*	*2/6/2023*

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HOUSE . . . . . No. 2788

By Representative Fernandes of Falmouth, a petition (accompanied by bill, House, No. 2788) of Dylan A. Fernandes and Lydia Edwards relative to empowering cities and towns to impose a mansion fee to support affordable housing. Revenue.

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Third General Court
(2023-2024)

An Act empowering cities and towns to impose a mansion fee 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 words shall, unless the context clearly requires otherwise, have the following meanings:-

"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 not less than 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 240 per cent of the city or town's median income as determined by the federal Department of Housing and Urban Development.

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

"Purchase 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, including, 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, excluding real estate taxes and other municipal liens or assessments which are not overdue at the time of transfer; and (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.

"Qualified holder", any governmental body or by a charitable corporation or trust whose purposes include creating or retaining or assisting in the creation or retention of affordable rental or other housing for occupancy by persons or families of low or moderate income.

"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 pursuant chapter 183A; provided, however, that real property interest 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.

"Regional affordable housing commission", a regional trust, bank, board or like entity created pursuant to general or special law for the creation and preservation of affordable housing as described in the general or special law establishing such entity, and whose membership includes two or more cities or towns. If a city or town is a member of a regional affordable housing commission, any authority granted to a city, town, or regional affordable housing commission pursuant to this section shall be exercised solely by the regional affordable housing commission.

"Regional affordable housing commission fund", a fund established by general or special law for the use of a regional affordable housing commission for the creation and preservation of affordable housing as defined in the general or special law establishing such fund.

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

"Time of transfer", the time at which the transfer of any real property interest 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) In any city or town that accepts this section in the manner provided in section 4 of chapter 4, the city or town may impose, and in any city or town that is a member of a regional

affordable housing commission, there shall be as set forth in the general or special law establishing such regional affordable housing commission, an excise upon the transfer of any real property interest in any real property situated in the city or town of not more than 2 per cent of the portion of the purchase price exceeding $1,000,000; provided, that the portion of the purchase price to which the excise applies may be increased in a city or town by an affirmative vote of a majority of voters of the city or town's legislative body or, in a city or town that is a member of a regional affordable housing commission, in such manner as may be provided in the general or special law establishing the regional affordable housing commission. The excise shall be due from the purchaser of the real property interest, and any agreement between the purchaser and the seller or any other person with reference to the allocation of the responsibility for paying the excise shall not affect the liability of the purchaser. The excise shall be paid to the city or town, or its designee, or to the regional affordable housing commission or its designee, as applicable, 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 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 excise. The city or town, or its designee, or the regional affordable housing commission or its designee, as applicable, shall promptly thereafter execute and issue a certificate indicating that the excise has been paid or that the transfer is exempt from the excise, stating the basis for the exemption. 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 a certificate is not affixed. Failure to comply with this requirement shall not affect the validity of any instrument.

The excise shall be due simultaneously at the time of 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 excise due pursuant to this section; instead, the city, town, or regional affordable housing commission or its designee, as applicable, shall determine the allocation between real estate and personalty on which the excise shall be calculated.

Upon receipt by a city or town, the city or town treasurer shall deposit all monies received pursuant to this section in the city or town's Municipal Affordable Housing Trust Fund established pursuant to section 55C or any other affordable housing trust fund established by general or special law 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. Upon receipt by a regional affordable housing commission or its designee, all monies received pursuant to this section shall be deposited into the regional affordable housing commission fund. If no Municipal Affordable Housing Trust Fund or regional affordable housing commission fund exists for a city or town, the treasurer shall pay the monies to the treasurer and receiver general of the commonwealth, who shall deposit the monies in the Affordable Housing Trust Fund established by chapter 121D. Notwithstanding the terms and conditions of the expenditure of funds from the city or town's Municipal Affordable Housing Trust Fund, Affordable Housing Trust Fund established by chapter 121D or any other affordable housing trust fund established by general or

special law providing for the creation and preservation of affordable housing other than a regional affordable housing commission fund, monies deposited in said funds pursuant to this section shall be expended to create and preserve affordable housing through the use of affordable housing restrictions as defined in this section. Monies received pursuant to this section and deposited in a regional affordable housing commission fund shall be expended for the purposes set forth in the general or special law establishing such fund.

(c) At any time within 7 days following the issuance of the certificates of payment of the excise imposed by subsection (b), the purchaser or the purchaser's legal representative may return the certificates to the city or town or its designee and the department of housing and community development or its designee, or the regional affordable housing commission or its designee, as applicable, for cancellation, together with an affidavit signed under oath or under the pains and penalties of perjury that the transfer, with respect to which the certificates were issued, has not been consummated, and thereupon the excise paid with respect to the 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 excise imposed by subsection (b):

(i) 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 a city, town or regional affordable housing commission.

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

(iii) Transfers made as gifts with consideration of less than $100. In any proceedings to determine the amount of any excise 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.

(iv) Transfers to the trustees of a trust in exchange for a beneficial interest received by the seller in such trust, and distributions by the trustees of a trust to the beneficiaries of such trust.

(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 pursuant to 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 shall be held by the charitable or religious organization solely for its public, charitable or religious purposes.

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

(ix) Transfers made to a corporation, partnership or limited liability company at the time of its formation, pursuant to which transfer no gain or loss is recognized pursuant to 26 U.S.C. §§ 351, 721; provided, however, that the transfer shall be exempt only in the event that: (1) with respect to a corporation, the transferor retains an interest in the newly formed corporation which is equivalent to the interest the transferor held prior to the transfer; or (2) with respect to a partnership or limited liability company, the transferor retains after formation rights in capital interests and profit interests within partnership or limited liability company which are equivalent to the interest the transferor held prior to the transfer.

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

(xi) Transfers consisting of the division of marital assets pursuant to section 34 of chapter 208 or any other general or special law.

(xii) Transfers of minority interests in publicly traded corporations, trusts, partnerships or limited liability companies, provided that the transfers are not part of a series of transfers which together constitute a transfer of control of a corporation, trust, partnership or limited liability company.

(xiii) Transfers exempt under any general or special law establishing a regional affordable housing commission.

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

(e) The city or town's treasurer, and a regional affordable housing commission or its designee, as applicable, 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 Municipal Affordable Housing Trust Fund, regional affordable housing commission fund, or any other affordable housing trust fund established by any general or special law providing for the creation and preservation of affordable housing.

Schedules of beneficiaries of trusts, list of stockholders of corporations and lists of partnerships filed with the Municipal Affordable Housing Trust Fund, regional affordable housing commission fund, or any other affordable housing trust fund established by a law of the commonwealth providing for the creation and preservation of affordable housing for the purpose

of determining or fixing the amounts of the excise imposed by subsection (b), or determining the existence of any exemption pursuant to subsection (d), shall not be public records for the purposes of section 10 of chapter 66.

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

(i) A purchaser shall pay interest on the unpaid amount of the excise, calculated from the time of transfer, at a rate equal to 14 per cent per annum.

(ii) If the city, town, the department of housing and community development or a regional affordable housing commission or its designee, as applicable, determines that a purchaser failed to pay all or a portion of an excise due under this section without fraud or willful intent to defeat or evade an excise imposed by this section within 30 days after the time of transfer, the purchaser shall pay a penalty equal to 5 per cent of the outstanding excise, as determined by the city, town, or regional affordable housing commission or its designee, as applicable, for failure to pay an excise pursuant to subsection (b), for each month or portion thereof thereafter that the excise is not paid in full, to the city, town, department of housing and community development, or regional affordable housing commission or its designee, as applicable; provided, however, that in no event shall the amount of the penalty exceed 25 per cent of the excise due at the time of transfer.

(iii) If the city, town,the department of housing and community development or a regional affordable housing commission or its designee, as applicable, determines that a purchaser failed to pay all or a portion of an excise due under this section due to fraud with intent

to defeat or evade the excise imposed by this section, the purchaser shall pay a penalty equal to the amount of the excise to the city, town, or regional affordable housing commission or its designee, as applicable, for failure to pay an excise pursuant to subsection (b); provided, that a transfer or series of transfers shall not be determined to have been made due to fraud with intent to defeat or evade the excise imposed by this section if the purchaser demonstrates by clear and convincing evidence, as determined by the city, town, department of housing and community development, or regional affordable housing commission or its designee, as applicable, that the transfer, or series of transfers, possessed both: (i) a valid, good faith business purpose other than avoidance of the excise; and (ii) economic substance apart from avoidance of the excise. In all such cases, the purchaser shall also have the burden of demonstrating by clear and convincing evidence, as determined by the city, town, department of housing and community development, or regional affordable housing commission or its designee, as applicable, that the asserted business purpose is commensurate with the amount of the excise to be thereby avoided.

(g) The city, town, department of housing and community development, or regional affordable housing commission or its designee, as applicable, shall notify the purchaser by registered or certified mail of any failure to discharge in full the amount of the excise established by subsection (b) and any penalty or interest assessed. The city, town, department of housing and community development, regional affordable housing commission or its designee, as applicable, shall grant a hearing on the matter of the imposition of an excise, or of any penalty or interest assessed, if a petition requesting such hearing is received by the city, town, department of housing and community development, or regional affordable housing commission or its designee, within 30 days after the mailing of the notice. The city, town, department of housing and community development, or regional affordable housing commission, as applicable, shall

notify the purchaser in writing by registered or certified mail of its determination concerning the deficiency, penalty or interest within 15 days after said hearing.

Any party aggrieved by a determination concerning a deficiency, penalty or interest may, after payment of said deficiency, appeal to the district or superior court within 3 months after the mailing of notification of the determination of the city, town, department of housing and community development, regional affordable housing commission or its designee, as applicable. Upon the failure to timely petition for a hearing or appeal within the time limits hereby established, the purchaser shall be bound by the terms of the notification, assessment or determination, and shall be barred from contesting the excise and any interest and penalty. All decisions of the courts shall be appealable. Every notice to be given under this section shall be effective if mailed by certified or registered mail to the purchaser at the address stated in a recorded or registered instrument by virtue of which the purchaser holds any real property interest, the transfer of which gives rise to the excise which is the subject of the notice; and if no address is stated or if the transfer is not evidenced by an instrument recorded or registered in the public records in the registry of deeds for the county in which the real property interest is situated, the notice shall be effective when mailed to the purchaser in care of any person appearing of record to have a fee interest in the real property in which the real property interest is held, at the address of the person as set forth in an instrument recorded or registered in the registry of deeds for the county in which the real property interest is situated.

All excises, penalties and interest required to be paid pursuant to this section shall constitute a personal debt of the purchaser and may be recovered in an action of contract or in any other appropriate action, suit or proceeding brought by the city, town, or regional affordable

housing commission or its designee, as applicable; said action, suit or proceeding shall be subject to chapter 260.

If any purchaser liable to pay the excise established by this section neglects or refuses to pay the excise, the amount, including any interest and penalty thereon, shall be a lien in favor of the city, town, department of housing and community development, or regional affordable housing commission, upon all property and rights to property, whether real or personal, belonging to such purchaser. The lien shall arise at the time of transfer and shall continue until the liability for such amount is satisfied. The lien shall in any event terminate not later than 6 years following the time of transfer. The lien shall not be valid as against any mortgagee, pledgee, purchaser or judgment creditor unless notice thereof has been filed by the city, town, department of housing and community development, regional affordable housing commission or its designee, as applicable, (i) with respect to real property or fixtures, in the registry of deeds for the county in which the real property interest is situated; or (ii) with respect to personal property, in the office in which a security or financing statement or notice with respect to the property would be filed in order to perfect a nonpossessory security interest belonging to the person named in the relevant notice, subject to the same limitations as set forth in section 50 of chapter 62C.

Purchasers applying for an exemption under subsection (d) shall be required at the time of application for exemption to execute an agreement legally binding on purchasers and separately legally binding upon any legal representative of the purchasers: (i) assuming complete liability for any excise, plus interest and penalties if any, waived on account of an allowed exemption subsequently determined to have been invalid, and (ii) submitting to the jurisdiction of the courts of the commonwealth. Excises, plus interest and penalties if any, shall be calculated

as of the date of the initial property transfer. Execution of the above-described agreement shall not be required of any mortgagee, pledge, purchaser or judgment creditor unless notice of the agreement has been recorded or filed by the city, town, department of housing and community development, or regional affordable housing commission or its designee.

In any case where there has been a refusal or neglect to pay any excise, interest or penalties imposed by this section, whether or not levy has been made, the city, town, department of housing and community development, or regional affordable housing commission or its designee, as applicable, in addition to other modes of relief, may direct a civil action to be filed in a district or superior court of the commonwealth to enforce their lien under this section with respect to such liability or to subject any property of whatever nature, of the delinquent, or in which they have any right, title or interest, to the payment of such liability.

The city, town, department of housing and community development, or regional affordable housing commission or its designee, as applicable may issue a waiver or release of any lien imposed by this section in their respective favor. Such waiver or release shall be conclusive evidence that the lien upon the property covered by the waiver or release is extinguished.

(i) The excise described by subsection (b) shall be of 5-year duration from the date a city or town accepts this section. The imposition of the excise and the excise amount shall be determined by a majority vote by the city or town's legislative body. The excise may continue for 5-year periods if affirmed by a majority vote of the city or town's legislative body. The excise described by subsection (b) may be decreased or eliminated by a two-thirds vote of the city or town's legislative body. If the legislative body does not renew the excise at the 5-year

anniversary, or any subsequent 5-year anniversary, or the legislative body votes to eliminate the excise, the balance of any monies previously collected shall be transferred to the city or town and held by the treasurer in a separate account, and shall first be used to satisfy any outstanding liabilities or obligations incurred by the city or town or the Municipal Affordable Housing Trust or any other affordable housing trust fund established by a law of the commonwealth providing for the creation and preservation of affordable housing as a result of imposition of the excise, and the remainder may be expended without further appropriation by the legislative body for affordable housing purposes. If the liabilities and obligations of the city or town or the Municipal Affordable Housing Trust or any other affordable housing trust fund established by any general or special law providing for the creation and preservation of affordable housing exceed the amounts transferred to the city or town, the excise shall remain in effect until such liabilities and obligations have been satisfied.

Notwithstanding anything to contrary in this section, with respect to a regional affordable housing commission and its member cities and towns, the duration of the excise described in subsection (b), the manner of imposition, modification and elimination of such excise, and the effect of non-renewal or elimination of such excise, shall all be as provided in the general or special law establishing such regional affordable housing commission.