

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:
<i>Dylan A. Fernandes</i>	<i>Barnstable, Dukes and Nantucket</i>	<i>1/20/2023</i>
<i>Lydia Edwards</i>	<i>Third Suffolk</i>	<i>2/6/2023</i>

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:

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

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

5 “Affordable housing restriction”, a recorded instrument held by a qualified holder which
6 encumbers or restricts a real property interest so that the real property interest is perpetually or
7 for a term of not less than 30 years limited to use as a residence occupied by a low or moderate
8 income household which earns less than a specified income level, the upper limit of which may
9 not exceed 240 per cent of the city or town’s median income as determined by the federal
10 Department of Housing and Urban Development.

11 “Purchaser”, the transferee, grantee or recipient of any real property interest.

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

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

28 “Real property interest”, any present or future legal or equitable interest in or to real
29 property and any beneficial interest therein, including the interest of any beneficiary in a trust
30 which holds any legal or equitable interest in real property, the interest of a partner or member in
31 a partnership or limited liability company, the interest of a stockholder in a corporation, the
32 interest of a holder of an option to purchase real property, the interest of a purchaser or seller
33 under a contract for purchase and sale of real property, and the transferable development rights
34 created pursuant chapter 183A; provided, however, that real property interest shall not include

35 any interest which is limited to any of the following: the dominant estate in any easement or right
36 of way; the right to enforce any restriction; any estate at will or at sufferance; any estate for years
37 having a term of less than 30 years; any reversionary right, condition, or right of entry for
38 condition broken; and the interest of a mortgagee or other secured party in any mortgage or
39 security agreement.

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

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

50 “Seller”, the transferor, grantor or immediate former owner of any real property interest.

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

55 (b) In any city or town that accepts this section in the manner provided in section 4 of
56 chapter 4, the city or town may impose, and in any city or town that is a member of a regional

57 affordable housing commission, there shall be as set forth in the general or special law
58 establishing such regional affordable housing commission, an excise upon the transfer of any real
59 property interest in any real property situated in the city or town of not more than 2 per cent of
60 the portion of the purchase price exceeding \$1,000,000; provided, that the portion of the
61 purchase price to which the excise applies may be increased in a city or town by an affirmative
62 vote of a majority of voters of the city or town's legislative body or, in a city or town that is a
63 member of a regional affordable housing commission, in such manner as may be provided in the
64 general or special law establishing the regional affordable housing commission. The excise shall
65 be due from the purchaser of the real property interest, and any agreement between the purchaser
66 and the seller or any other person with reference to the allocation of the responsibility for paying
67 the excise shall not affect the liability of the purchaser. The excise shall be paid to the city or
68 town, or its designee, or to the regional affordable housing commission or its designee, as
69 applicable, and shall be accompanied by a copy of the deed or other instrument evidencing such
70 transfer, if any, and an affidavit signed under oath or under the pains and penalties of perjury by
71 the purchaser or the purchaser's legal representative attesting to the true and complete purchase
72 price and the basis, if any, upon which the transfer is claimed to be exempt in whole or in part
73 from the excise. The city or town, or its designee, or the regional affordable housing commission
74 or its designee, as applicable, shall promptly thereafter execute and issue a certificate indicating
75 that the excise has been paid or that the transfer is exempt from the excise, stating the basis for
76 the exemption. The register of deeds for the county in which the city or town is located, and the
77 assistant recorder for the registry district of the county in which the city or town is located, shall
78 not record or register, or receive or accept for recording or registration, any deed, except a

79 mortgage deed, to which a certificate is not affixed. Failure to comply with this requirement shall
80 not affect the validity of any instrument.

81 The excise shall be due simultaneously at the time of transfer upon which it is imposed.
82 Notwithstanding the foregoing, whenever there is a conveyance of real property interests and a
83 conveyance of personalty related thereto at or about the same time, the allocations of payments
84 between real estate and personalty agreed to by the purchaser and seller shall not determine the
85 amount of the excise due pursuant to this section; instead, the city, town, or regional affordable
86 housing commission or its designee, as applicable, shall determine the allocation between real
87 estate and personalty on which the excise shall be calculated.

88 Upon receipt by a city or town, the city or town treasurer shall deposit all monies
89 received pursuant to this section in the city or town's Municipal Affordable Housing Trust Fund
90 established pursuant to section 55C or any other affordable housing trust fund established by
91 general or special law providing for the creation and preservation of affordable housing in
92 municipalities for the benefit of low and moderate income households or for the funding of
93 community housing, as defined in and in accordance with chapter 44B. Upon receipt by a
94 regional affordable housing commission or its designee, all monies received pursuant to this
95 section shall be deposited into the regional affordable housing commission fund. If no Municipal
96 Affordable Housing Trust Fund or regional affordable housing commission fund exists for a city
97 or town, the treasurer shall pay the monies to the treasurer and receiver general of the
98 commonwealth, who shall deposit the monies in the Affordable Housing Trust Fund established
99 by chapter 121D. Notwithstanding the terms and conditions of the expenditure of funds from the
100 city or town's Municipal Affordable Housing Trust Fund, Affordable Housing Trust Fund
101 established by chapter 121D or any other affordable housing trust fund established by general or

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

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

116 (d) The following transfers of real property interests shall be exempt from the excise
117 imposed by subsection (b):

118 (i) Transfers to the government of the United States, the commonwealth and any of their
119 instrumentalities, agencies or subdivisions, including but not limited to transfers to a city, town
120 or regional affordable housing commission.

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

123 (iii) Transfers made as gifts with consideration of less than \$100. In any proceedings to
124 determine the amount of any excise due hereunder, it shall be presumed that any transfer for
125 consideration of less than fair market value of the real property interest transferred was made as a
126 gift without consideration to the extent of the difference between the fair market value of the real
127 property interest transferred and the amount of consideration claimed by the purchaser to have
128 been paid or transferred, if the seller shall have been at the time of transfer the spouse, the lineal
129 descendant, or the lineal ancestor of the purchaser, by blood or adoption, and otherwise it shall
130 be presumed that consideration was paid in an amount equal to the fair market value of the real
131 property interest transferred, at the time of transfer.

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

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

137 (vi) Transfers made in partition of land and improvements thereto pursuant to chapter
138 241.

139 (vii) Transfers to any charitable organization as defined in clause Third of section 5 of
140 chapter 59, or any religious organization, provided that the real property interest so transferred
141 shall be held by the charitable or religious organization solely for its public, charitable or
142 religious purposes.

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

146 (ix) Transfers made to a corporation, partnership or limited liability company at the time
147 of its formation, pursuant to which transfer no gain or loss is recognized pursuant to 26 U.S.C.
148 §§ 351, 721; provided, however, that the transfer shall be exempt only in the event that: (1) with
149 respect to a corporation, the transferor retains an interest in the newly formed corporation which
150 is equivalent to the interest the transferor held prior to the transfer; or (2) with respect to a
151 partnership or limited liability company, the transferor retains after formation rights in capital
152 interests and profit interests within partnership or limited liability company which are equivalent
153 to the interest the transferor held prior to the transfer.

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

165 (xi) Transfers consisting of the division of marital assets pursuant to section 34 of chapter
166 208 or any other general or special law.

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

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

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

177 (e) The city or town's treasurer, and a regional affordable housing commission or its
178 designee, as applicable, shall keep a full and accurate account stating when, from or to whom,
179 and on what account money has been paid or received relative to the activities of the Municipal
180 Affordable Housing Trust Fund, regional affordable housing commission fund, or any other
181 affordable housing trust fund established by any general or special law providing for the creation
182 and preservation of affordable housing.

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

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

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

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

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

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

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

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

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

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

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

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

256 If any purchaser liable to pay the excise established by this section neglects or refuses to
257 pay the excise, the amount, including any interest and penalty thereon, shall be a lien in favor of
258 the city, town, department of housing and community development, or regional affordable
259 housing commission, upon all property and rights to property, whether real or personal,
260 belonging to such purchaser. The lien shall arise at the time of transfer and shall continue until
261 the liability for such amount is satisfied. The lien shall in any event terminate not later than 6
262 years following the time of transfer. The lien shall not be valid as against any mortgagee,
263 pledgee, purchaser or judgment creditor unless notice thereof has been filed by the city, town,
264 department of housing and community development, regional affordable housing commission or
265 its designee, as applicable, (i) with respect to real property or fixtures, in the registry of deeds for
266 the county in which the real property interest is situated; or (ii) with respect to personal property,
267 in the office in which a security or financing statement or notice with respect to the property
268 would be filed in order to perfect a nonpossessory security interest belonging to the person
269 named in the relevant notice, subject to the same limitations as set forth in section 50 of chapter
270 62C.

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

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

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

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

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

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

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